

4-18-2013

In the Matter of the Estate of Melvin Peterson Clerk's Record v. 1 Dckt. 40615

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LAW CLERK

Vol. 1 of 4

**SUPREME COURT
OF THE
STATE OF IDAHO**

IN THE MATTER OF:
THE ESTATE OF MELVIN PETERSON,
DECEASED

IDAHO DEPARTMENT OF HEALTH AND WELFARE

Petitioner / Respondent
vs.

CATHIE PETERSON

Respondent / Appellant

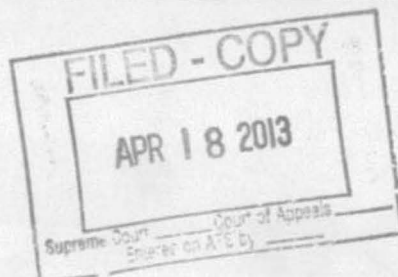
Appealed from the District Court
of the First Judicial District of the State of Idaho,
in and for Boundary County

Hon. Jeff M. Brudie

BRENT FEATHERSTON
Attorney for Petitioner / Respondent

W. COREY CARTWRIGHT
Attorney for Respondent / Appellant

SEE AUGMENTATION RECORD



W10615

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE ESTATE OF)	SUPREME COURT NO. 40615-2013
)	
MELVIN PETERSON	)	DISTRICT COURT NO. CV-2007-266
)	
DECEASED)	
-----)	
)	
IDAHO DEPARTMENT OF HEALTH)	
& WELFARE,)	
)	
Petitioner - Respondent,)	
)	
v.)	
)	
CATHIE PETERSON,)	
)	
Respondent - Appellant.)	
-----)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for the
County of Boundary

HON. JEFF M. BRUDIE
District Judge

BRENT FEATHERSTON
113 SOUTH SECOND AVENUE
SANDPOINT, ID 83864

W. COREY CARTWRIGHT
PO BOX 83720 / 3276 ELDER ST.
BOISE, ID 83720-0009

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

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Date: 2/6/2013

Time: 12:08 PM

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First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie

In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
7/26/2007	NCIE	STACY	Application For Informal Probate and Appointment Of A Personal Rep
		STACY	Filing: L 4 - Probate Matters Asking For Appointment Of Personal Rep. Paid by: John Finney Receipt number: 0002453 Dated: 7/26/2007 Amount: \$88.00 (Check) For: Peterson, Cathie (other party)
	APER	STACY	Other party: Peterson, Cathie Appearance John A. Finney
		STACY	Renoucement of And Consent to Appointment As Personal Rep
	ORDR	TACIE	Statement Of Informal Probate And Appointment Of A Personal Representative
	ORDR	TACIE	Letters Of Personal Representative
	CDIS	TACIE	Civil Disposition entered for: Peterson, Cathie, Other Party; Peterson, Melvin, Subject. order date: 7/26/2007
	STAT	TACIE	STATUS CHANGED: Closed
7/30/2007		TACIE	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Finney Receipt number: 0002493 Dated: 7/30/2007 Amount: \$.50 (Check)
		TACIE	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Finney Receipt number: 0002493 Dated: 7/30/2007 Amount: \$1.00 (Check)
9/6/2007	AFFD	TACIE	Affidavit Of Publication
11/19/2007	DENO	DARMSTRONG	Demand For Notice
	CLAI	DARMSTRONG	Claim Against Estate
11/30/2007	MISC	DARMSTRONG	Disallowance of Creditor's Claim and Request for Itemization
12/10/2007	CLAI	ROSE	Amended Claim Against Estate
	PETN	ROSE	Petition for Allowance of Claim
12/13/2007	NOTC	DARMSTRONG	Notice of Disallowance of Amended Claim Against Estate
12/19/2007	PETN	ROSE	Petition to Require Payment of Claim
12/28/2007	PETN	ROSE	Petition for Allowance of Amended Claim
1/4/2008	MISC	TACIE	Objections
2/26/2008	HRSC	JAMIE	Hearing Scheduled (Petition 03/25/2008 10:30 AM) for Allownace of Amended Claim
	NOTH	JAMIE	Notice Of Hearing
	APER	JAMIE	Other party: State of Idaho, Dept. of Health and Welfare Appearance Larry L. Goins

Date: 2/6/2013

Time: 12:08 PM

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First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie
In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
3/25/2008	HRHD	JAMIE	Hearing result for Petition held on 03/25/2008 10:30 AM: Hearing Held for Allowance of Amended Claim
	*LOG	JAMIE	#8-2-4
4/4/2008	ORDR	JAMIE	Order Granting Petition for Allowance of Amended Claim
	CDIS	JAMIE	Civil Disposition entered for: Peterson, Cathie, Other Party; State of Idaho, Dept. of Health and Welfare, Other Party. order date: 4/4/2008
	STAT	JAMIE	STATUS CHANGED: Closed
5/5/2008	REOP	DARMSTRONG	Reopen (case Previously Closed)
	PETN	DARMSTRONG	Petition to Require Payment of Claim
	BREF	DARMSTRONG	Brief in Support of Petition to Require Payment of Claim
	NOTC	DARMSTRONG	Notice of hearing
	HRSC	DARMSTRONG	Hearing Scheduled (Petition 06/03/2008 02:00 pm) to Require Payment of Claim
5/28/2008	MISC	JAMIE	Personal Representative's Inventory
	OBJC	JAMIE	Objection to Petition to Require Payment of Claim
6/3/2008	CMIN	ROSE	Court Minutes Hearing type: Petition Hearing date: 6/3/2008 Time: 9:24 am Audio tape number: 8-2-7
	INHD	ROSE	Hearing result for Petition held on 06/03/2008 02:00 PM: Interim Hearing Held to Require Payment of Claim
3/12/2008	ORDR	ROSE	Order on Petition to Require Payment of Claim
3/6/2008	MOTN	JAMIE	Motion to Hire Appraiser and Notice of Hearing
	HRSC	JAMIE	Hearing Scheduled (Motion 08/26/2008 11:00 AM) To Hire Appraiser
3/11/2008	OBJC	DARMSTRONG	Objection to Motion to Hire Appraiser
	NOTC	DARMSTRONG	Notice of Hearing
	MOTN	DARMSTRONG	Motion for Hearing by Telephonic Conference
	HRSC	DARMSTRONG	Hearing Scheduled (Motion 08/26/2008 11:00 AM) Objection to Appraiser
3/12/2008	ORDR	JAMIE	Order for Hearing by Telephonic Conference
3/19/2008	CONT	ROSE	Hearing result for Motion held on 08/26/2008 11:00 AM: Continued Objection to Appraiser
	CONT	ROSE	Hearing result for Motion held on 08/26/2008 11:00 AM: Continued To Hire Appraiser
3/20/2008	NOTH	JAMIE	Amended Notice of Hearing
	HRSC	JAMIE	Hearing Scheduled (Motion 09/15/2008 09:00 AM) To Hire Appraiser

Date: 2/6/2013

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First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie

In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
8/20/2008	HRSC	JAMIE	Hearing Scheduled (Motion 09/15/2008 09:00 AM) Ojection to Hire Appraiser
9/15/2008	INHD	DARMSTRONG	Hearing result for Motion held on 09/15/2008 09:00 AM: Interim Hearing Held To Hire Appraiser
	*LOG	DARMSTRONG	Court Log 8-1-37
9/23/2008	ORDR	DARMSTRONG	Order Approving Hiring of Appraiser
5/14/2009	MOTN	TACIE	Motion To Compel Short Form Appraisal
	NOFH	TACIE	Notice Of Hearing
	MOTN	TACIE	Motion For Hearing By Telephonic Conference
	ORDR	TACIE	Order For Hearing By Telephonic Conference
5/15/2009	HRSC	TACIE	Hearing Scheduled (Motion to Compel 06/09/2009 11:00 AM) Short Form Appraisal
6/5/2009	HRVC	ROSE	Hearing result for Motion to Compel held on 06/09/2009 11:00 AM: Hearing Vacated Short Form Appraisal
		ROSE	Goins appearing telephonically
		ROSE	Email fr Goins Office taking down hearing of 6-9-09
7/15/2009	NOTC	JAMIE	Notice of Filing Apprasial Report and Addendum
	PETN	JAMIE	Petition to Compel Sale of Home and Payment to Department
	BREF	JAMIE	Brief in Support of Petition
	NOTH	JAMIE	Notice Of Hearing
	HRSC	JAMIE	Hearing Scheduled (Petition 07/28/2009 10:30 AM) to Compel Sale
7/28/2009	DPHR	DARMSTRONG	Hearing result for Petition held on 07/28/2009 10:30 AM: Disposition With Hearing to Compel Sale
	*LOG	DARMSTRONG	Court Log 9-1-31A
3/11/2009	ORDR	DARMSTRONG	Order Granting Petition to Compel
	STAT	DARMSTRONG	STATUS CHANGED: closed pending clerk action
3/20/2009		JAMIE	Filing: L2 - Appeal, Magistrate Division to District Court Paid by: Finney, John A. (attorney for Peterson, Cathie) Receipt number: 0007023 Dated: 8/20/2009 Amount: \$53.00 (Check) For: Peterson, Cathie (other party)
3/21/2009	APDC	DARMSTRONG	Appeal Filed In District Court
	CHJG	DARMSTRONG	Change Assigned Judge
	STAT	DARMSTRONG	STATUS CHANGED: Reopened
	ESTM	DARMSTRONG	Estimate Of Transcript Cost
3/25/2009	BONT	DARMSTRONG	Bond Posted for Transcript (Receipt 7085 Dated 8/25/2009 for 126.75)

Date: 2/6/2013

Time: 12:08 PM

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First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie
In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
9/14/2009	TRAN	DARMSTRONG Transcript Filed (7/28/09)	Steve Verby
	TRAN	DARMSTRONG Transcript Filed (6/3/08)	Steve Verby
	NOTC	DARMSTRONG Notice of Balance Due	Steve Verby
	NOTC	DARMSTRONG Notice of Lodging	Steve Verby
9/21/2009	BNDV	DARMSTRONG Bond Converted (Transaction number 642 dated 9/21/2009 amount 126.75)	Steve Verby
	BONT	DARMSTRONG Bond Posted for Transcript (Receipt 7424 Dated 9/21/2009 for 9.75)	Steve Verby
	BNDV	DARMSTRONG Bond Converted (Transaction number 643 dated 9/21/2009 amount 9.75)	Steve Verby
9/23/2009	MISC	JAMIE Receipt of Transcript-Finney	Steve Verby
	MISC	JAMIE Receipt of Transcript-Finney	Steve Verby
10/1/2009	MISC	DARMSTRONG Receipt of Transcript - Cartwright	Steve Verby
	MISC	DARMSTRONG Receipt of Transcript - Cartwright	Steve Verby
	CTSV	DARMSTRONG Certificate Of Service	Steve Verby
	APER	DARMSTRONG Other party: State of Idaho, Dept. of Health and Welfare Appearance W. Cory Cartwright	Steve Verby
10/9/2009	NOTC	DARMSTRONG Notice of Settling Transcript on Appeal	Steve Verby
11/13/2009	BREF	DARMSTRONG Appellant's Brief	Steve Verby
12/14/2009	BREF	DARMSTRONG Respondent's Brief	Steve Verby
12/23/2009	BREF	DARMSTRONG Appellant's Reply Brief	Steve Verby
12/31/2009	HRSC	DARMSTRONG Hearing Scheduled (Oral Argument on Appeal 03/02/2010 02:00 PM)	Steve Verby
		DARMSTRONG Notice Of Hearing	Steve Verby
3/2/2010	ADVS	DARMSTRONG Hearing result for Oral Argument on Appeal held on 03/02/2010 02:00 PM: Case Taken Under Advisement	Steve Verby
	CMIN	DARMSTRONG Court Minutes Hearing type: Oral Argument on Appeal Hearing date: 3/2/2010 Time: 2:18 pm Court reporter: Val Larsen Minutes Clerk: Della Armstrong Tape Number: 10-1-9 Party: Cathie Peterson, Attorney: John Finney Party: State of Idaho, Dept. of Health and Welfare, Attorney: W. Cory Cartwright	Steve Verby
3/26/2010	DEOP	DARMSTRONG Decision On Appeal	Steve Verby
3/3/2010	MEMO	KWESTBROOK Memorandum Of Costs	Steve Verby
3/23/2010	INVE	DARMSTRONG Amended Personal Representative's Inventory	Justin W. Julian
	PETN	DARMSTRONG Petition for Approval of And Partial Payment of Attorney Fees and Costs and Notice of Hearing	Justin W. Julian
	PETN	DARMSTRONG Petition for Authority to Sell and Notice of Hearing	Justin W. Julian

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
6/23/2010	HRSC	DARMSTRONG	Hearing Scheduled (Petition 07/19/2010 09:00 AM) Approval of and Partial Payment of Attorney Fees and Costs / Authority to Sell Justin W. Julian
6/30/2010	PETN	KWESTBROOK	Petition For Findings Of Fact And Conclusions Of Law Justin W. Julian
7/1/2010	MEMO	DARMSTRONG	Memorandum in Opposition to Petition for Payment of Attorney Fees Justin W. Julian
	HRSC	DARMSTRONG	Hearing Scheduled (Petition 08/10/2010 02:00 PM) fo Findings of Fact and Conclusions of Law Justin W. Julian
	NOTC	DARMSTRONG	Notice of Hearing Justin W. Julian
7/7/2010	NOTH	JAMIE	Amended Notice Of Hearing Steve Verby
	CONT	JAMIE	Continued (Petition 08/10/2010 02:00 PM) Approval of and Partial Payment of Attorney Fees and Costs / Authority to Sell Justin W. Julian
7/8/2010	ORDR	DARMSTRONG	Order Awarding Costs Steve Verby
	REMT	DARMSTRONG	Clerk's Remittitur Steve Verby
	RMAN	DARMSTRONG	Remanded Steve Verby
	CHJG	DARMSTRONG	Change Assigned Judge Justin W. Julian
7/9/2010	HRSC	ROSE	Hearing Scheduled (Status 07/27/2010 09:30 AM) re trial Justin W. Julian
		ROSE	Notice Of Hearing Justin W. Julian
7/16/2010	MOTN	DARMSTRONG	Motion to Appear Telephonically Justin W. Julian
7/19/2010	ORDR	JAMIE	Order for Hearing by Telephonic Conference Justin W. Julian
7/27/2010	HRHD	KWESTBROOK	Hearing result for Status held on 07/27/2010 09:30 AM: Hearing Held re trial Cartwright telephonic Justin W. Julian
	CMIN	KWESTBROOK	Court Minutes Hearing type: Status Hearing date: 7/27/2010 Time: 9:32 am Minutes Clerk: K. Westbrook Tape Number: 10-1-31 Justin W. Julian
7/30/2010	HRSC	ROSE	Hearing Scheduled (Pretrial Conference 10/05/2010 10:00 AM) Justin W. Julian
	HRSC	ROSE	Hearing Scheduled (Court Trial 10/21/2010 09:30 AM) Justin W. Julian
		ROSE	Notice Of Hearing Justin W. Julian
8/2/2010	NOTC	JAMIE	Notice of Discovery Justin W. Julian
8/3/2010	MOTN	JAMIE	Motion to Appear Telephonically Justin W. Julian
8/9/2010	ORDR	JAMIE	Order for Hearing by Telephonic Conference Justin W. Julian
8/10/2010	INHD	JAMIE	Hearing result for Petition held on 08/10/2010 02:00 PM: Interim Hearing Held for Findings of Fact and Conclusions of Law Justin W. Julian

Date: 2/6/2013

Time: 12:08 PM

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First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie
In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
8/10/2010	INHD	JAMIE	Hearing result for Petition held on 08/10/2010 02:00 PM: Interim Hearing Held Approval of and Partial Payment of Attorney Fees and Costs / Authority to Sell
	CMIN	JAMIE	Court Minutes Hearing type: Petitions Hearing date: 8/10/2010 Time: 2:06 pm Minutes Clerk: Jamie Wilson Tape Number: 10-1-33 Party: Cathie Peterson, Attorney: John Finney Party: State of Idaho, Dept. of Health and Welfare, Attorney: W. Cory Cartwright
8/16/2010	ORDR	JAMIE	Order Approving Sale
8/17/2010	ORDR	JAMIE	Order for Partial Payment of Attorney Fees and Payment of Costs
8/25/2010	STIP	JAMIE	Stipulation Regarding Partial Payment of Attorney Fees
8/30/2010	NOTC	JAMIE	Notice of Serving Responses to First Requests for Admission
9/7/2010	NOTC	JAMIE	Notice of Deposition
9/15/2010	NOTC	JAMIE	Amended Notice of Deposition
9/22/2010	MEMO	KWESTBROOK	Memorandum In Opposition To Motion For Automatic Disqualification
	MOTN	KWESTBROOK	Motion To Strike
	MEMO	KWESTBROOK	Memorandum In Support Of Motion To Strike
	PETN	KWESTBROOK	Petition For Removal Of Personal Representative For Cause
	MEMO	KWESTBROOK	Memorandum In Support Of Petition For Removal
9/23/2010	DENO	KWESTBROOK	Demand For Notice And Special Appearance (I.C. 15-3-204) (I.R.C.P. Rule 4(i)(2))
	APER	KWESTBROOK	Other party: Peterson, Cathie Appearance Brent C. Featherston
		KWESTBROOK	Filing: J1b- Probate, Demand for notice Paid by: Featherston, Brent C. (attorney for Peterson, Cathie) Receipt number: 0003739 Dated: 9/23/2010 Amount: \$9.00 (Check) For: Peterson, Cathie (other party)
	MDQJ	KWESTBROOK	Motion For Automatic Disqualification Of Judge I.R.C.P. 40(d)(1)
	MDQJ	KWESTBROOK	Amended Motion For Automatic Disqualification Of Judge I.R.C.P. 40(d)(1)
		JAMIE	Filing: J1a - Probate, petition for distribution of estate Paid by: Finney, John A. (attorney for Peterson, Cathie) Receipt number: 0003753 Dated: 9/24/2010 Amount: \$25.00 (Check) For: Peterson, Cathie (other party)

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Date: 2/6/2013

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First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie

In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
9/23/2010		JAMIE	Filing: J1d - Probate, intermediate or final accounting of personal rep Paid by: Finney, John A. (attorney for Peterson, Cathie) Receipt number: 0003753 Dated: 9/24/2010 Amount: \$9.00 (Check) For: Peterson, Cathie (other party)
	MISC	JAMIE	Personal Representative's Final Accounting and Petition for Decree of Distribution; and Notice of Hearing
9/27/2010	ORDR	ROSE	Order Denying Amended Motion for Automatic Disqualification - IRCP 40(d)(1)
	NOTH	JAMIE	Notice Of Hearing
	HRSC	JAMIE	Hearing Scheduled (Motions 10/07/2010 11:00 AM) to Strike and for Removal of PR for Cause
	NOTC	JAMIE	Notice to Vacate Deposition
9/29/2010	MISC	JAMIE	Objections
10/5/2010	INHD	JAMIE	Hearing result for Pretrial Conference held on 10/05/2010 10:00 AM: Interim Hearing Held Carwright telephonic
	CMIN	JAMIE	Court Minutes Hearing type: Pretrial Conference Hearing date: 10/5/2010 Time: 10:07 am Courtroom: 002 Minutes Clerk: Jamie Wilson Tape Number: FD2 Party: Cathie Peterson, Attorney: John Finney Party: State of Idaho, Dept. of Health and Welfare, Attorney: W. Cory Cartwright
10/7/2010	INHD	DARMSTRONG	Hearing result for Motions held on 10/07/2010 11:00 AM: Interim Hearing Held to Strike and for Removal of PR for Cause
	CMIN	DARMSTRONG	Court Minutes Hearing type: Motion / Petition Hearing date: 10/7/2010 Time: 11:02 am Courtroom: 1 Minutes Clerk: Della Armtrong Tape Number: FD 1 Party: Cathie Peterson, Attorney: John Finney Party: Cathie Peterson, Attorney: Brent Featherston Party: State of Idaho, Dept. of Health and Welfare, Attorney: W. Cory Cartwright
	ORDR	DARMSTRONG	Order Removing Personal Representative
	PETN	DARMSTRONG	Petition for Formal Apointment of Successor Personal Representative
	ACAP	DARMSTRONG	Acceptance Of Appointment
	HRVC	DARMSTRONG	Hearing result for Court Trial held on 10/21/2010 09:30 AM: Hearing Vacated

Date: 2/6/2013

Time: 12:08 PM

Page 8 of 11

First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie
In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
10/13/2010		DARMSTRONG Filing: L2 - Appeal, Magistrate Division to District Court Paid by: Finney, John A. (attorney for Peterson, Cathie) Receipt number: 0004055 Dated: 10/14/2010 Amount: \$53.00 (Check) For: Peterson, Cathie (other party)	Justin W. Julian
	APDC	DARMSTRONG Notice of Appeal	Justin W. Julian
	CHJG	DARMSTRONG Change Assigned Judge	Steve Verby
10/14/2010	ESTM	DARMSTRONG Estimate Of Transcript Cost	Steve Verby
10/19/2010	ORDR	DARMSTRONG Order For Appointment of Successor Personal Representative	Justin W. Julian
11/3/2010	BONT	DARMSTRONG Bond Posted for Transcript (Receipt 4334 Dated 11/3/2010 for 225.00)	Steve Verby
11/22/2010	NOTC	DARMSTRONG Notice of Lodging	Steve Verby
	TRAN	DARMSTRONG Transcript Filed (10/7/10 Petition & Motion)	Steve Verby
11/23/2010	BNDV	DARMSTRONG Bond Converted (Transaction number 326 dated 11/23/2010 amount 139.75)	Steve Verby
11/29/2010	MISC	JAMIE Receipt of Transcript - Featherston	Steve Verby
12/1/2010	MISC	JAMIE Receipt of Transcript - Finney	Steve Verby
12/3/2010	MISC	DARMSTRONG Receipt of Transcript - Cartwright	Steve Verby
12/20/2010	NOTC	DARMSTRONG Notice of Scheduling Transcript on Appeal and Briefing Schedule	Steve Verby
1/20/2011	BNDE	DARMSTRONG Transcript Bond Exonerated (Amount 85.25)	Steve Verby
1/24/2011	BREF	KWESTBROOK Appellant's Brief	Steve Verby
2/25/2011	BREF	DARMSTRONG Respondent's Brief	Steve Verby
4/4/2011	NOTC	DARMSTRONG Notice of Oral Argument	Steve Verby
	HRSC	DARMSTRONG Hearing Scheduled (Oral Argument 05/03/2011 11:30 AM)	Steve Verby
5/2/2011	CONT	DARMSTRONG Continued (Oral Argument 05/03/2011 02:30 PM)	Steve Verby
		DARMSTRONG Amended Notice Of Hearing	Steve Verby
5/3/2011	DPHR	DARMSTRONG Hearing result for Oral Argument held on 05/03/2011 02:30 PM: Disposition With Hearing Bonner County Courthouse	Steve Verby
	*LOG	DARMSTRONG Bonner Co. Minutes (No CD provided)	Steve Verby
5/11/2011	ORDR	DARMSTRONG Order	Steve Verby
5/27/2011	CLAM	JAMIE Claim for Unpaid Attorney Fees and Costs	Steve Verby
5/27/2011	REMT	DARMSTRONG Remittitur	Steve Verby
	RMAN	DARMSTRONG Remanded	Steve Verby
	CHJG	DARMSTRONG Change Assigned Judge	Justin W. Julian
5/29/2011	HRSC	ROSE Hearing Scheduled (Scheduling and Planning 07/26/2011 09:30 AM)	Justin W. Julian
		ROSE Notice Of Hearing	Justin W. Julian

8

Date: 2/6/2013

Time: 12:08 PM

Page 9 of 11

First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie

In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
7/11/2011	MOTN	KWESTBROOK Motion To Appear Telephonically	Justin W. Julian
7/12/2011	ORDR	KWESTBROOK Order For Hearing By Telephonic Conference	Justin W. Julian
7/26/2011	INHD	JAMIE Hearing result for Scheduling and Planning scheduled on 07/26/2011 09:30 AM: Interim Hearing Held Cartwright telephonic	Justin W. Julian
	CMIN	JAMIE Court Minutes Hearing type: Scheduling and Planning Hearing date: 7/26/2011 Time: 9:36 am Courtroom: 001 Minutes Clerk: Jamie Wilson Party: Cathie Peterson, Attorney: John Finney Party: State of Idaho, Dept. of Health and Welfare, Attorney: W. Cory Cartwright	Justin W. Julian
	HRSC	ROSE Hearing Scheduled (Court Trial 09/29/2011 09:30 AM)	Justin W. Julian
		ROSE Notice Of Hearing	Justin W. Julian
7/29/2011	MISC	ROSE Letter fr Carl Peterson re notices of hearings	Justin W. Julian
9/26/2011	AFSV	KWESTBROOK Affidavit Of Service	Justin W. Julian
9/28/2011	MOTN	ROSE Motion to Quash Subpoena and Notice of Hearing	Justin W. Julian
	HRSC	ROSE Hearing Scheduled (Motion 09/29/2011 09:30 AM) to Quash Subpoena	Justin W. Julian
9/29/2011	HRHD	ROSE Hearing result for Motion scheduled on 09/29/2011 09:30 AM: Hearing Held to Quash Subpoena	Justin W. Julian
	CTST	ROSE Hearing result for Court Trial scheduled on 09/29/2011 09:30 AM: Court Trial Started	Justin W. Julian
	MISC	ROSE Personal Representative's Requested Findings of Fact and Conclusions of Law	Justin W. Julian
	CMIN	ROSE Court Minutes Hearing type: Court Trial Hearing date: 9/29/2011 Time: 9:28 am Minutes Clerk: Rose Sprungl	Justin W. Julian
11/7/2011	BREF	ROSE Closing Brief (Cartwright)	Justin W. Julian
11/18/2011	BREF	DARMSTRONG Cathy Peterson's Responsive Brief (Featherston)	Justin W. Julian
12/5/2011	BREF	ROSE Reply Brief (Cartwright)	Justin W. Julian
12/22/2011	MEOP	ROSE Memorandum Opinion	Justin W. Julian
1/10/2012	CDIS	ROSE Civil Disposition entered for: Peterson, Cathie, Other Party; State of Idaho, Dept. of Health and Welfare, Other Party. Case Close date: 1/10/2012	Justin W. Julian
	ORDR	ROSE Order re Value of Estate Interest	Justin W. Julian

Date: 2/6/2013

Time: 12:08 PM

Page 10 of 11

First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie
In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
2/6/2012		KWESTBROOK	Filing: L2 - Appeal, Magistrate Division to District Court Paid by: Featherston, Brent C. (attorney for Peterson, Cathie) Receipt number: 0000429 Dated: 2/7/2012 Amount: \$53.00 (Check) For: Peterson, Cathie (other party)
	APDC	JAMIE	Notice of Appeal Justin W. Julian
	APDC	JAMIE	Appeal Filed In District Court Justin W. Julian
	STAT	JAMIE	STATUS CHANGED: Reopened Justin W. Julian
	CHJG	JAMIE	Change Assigned Judge Steve Verby
2/10/2012	MISC	JAMIE	Estimate of Transcript Cost Steve Verby
2/15/2012	BONT	DARMSTRONG	Bond Posted for Transcript (Receipt 520 Dated 2/15/2012 for 225.00) Steve Verby
3/15/2012	TRAN	JAMIE	Transcript Filed Steve Verby
	NLT	JAMIE	Notice Of Lodging Transcript On Appeal Steve Verby
3/19/2012	MISC	KWESTBROOK	Receipt Of Transcript (J. Finney) Steve Verby
3/20/2012	MISC	JAMIE	Receipt of Transcript (B Featherston) Steve Verby
3/26/2012	MISC	JAMIE	Receipt of Transcript (W Cartwright) Steve Verby
4/4/2012	BNDV	JAMIE	Bond Converted (Transaction number 60 dated 4/4/2012 amount 172.25) Steve Verby
	BNDE	JAMIE	Transcript Bond Exonerated (Amount 52.75) Steve Verby
4/11/2012	NOTC	JAMIE	Notice of Settling Transcript on Appeal and Briefing Schedule Steve Verby
5/16/2012	STIP	JAMIE	Stipulation to Extend Briefing Deadlines Steve Verby
5/22/2012	ORDR	KWESTBROOK	Order Extending Briefing Deadlines Steve Verby
5/31/2012	BREF	JAMIE	Appellant's Brief Steve Verby
5/21/2012	BREF	JAMIE	Respondent's Brief Steve Verby
7/20/2012	BREF	DARMSTRONG	Appellant's Reply Brief Steve Verby
3/1/2012	ORDR	DARMSTRONG	Order of Reassignment John Mitchell
3/2/2012	OASI	DARMSTRONG	Order Assigning Judge John Stegner
	CHJG	DARMSTRONG	Change Assigned Judge Jeff M. Brudie
3/22/2012	MOTN	DARMSTRONG	Motion for Automatic Disqualification of Judge (Featherston) Jeff M. Brudie
3/4/2012	ORDR	DARMSTRONG	Order Denying Motion for Automatic Disqualification Jeff M. Brudie
3/17/2012	ORDR	DARMSTRONG	Order Scheduling Oral Argument Jeff M. Brudie
	HRSC	DARMSTRONG	Hearing Scheduled (Oral Argument 10/12/2012 10:00 AM) Jeff M. Brudie
3/20/2012	NOTC	KWESTBROOK	Notice Of Not Attending Jeff M. Brudie
10/15/2012	INHD	DARMSTRONG	Hearing result for Oral Argument scheduled on 10/12/2012 10:00 AM: Interim Hearing Held Jeff M. Brudie
	ADVS	DARMSTRONG	Case Taken Under Advisement Jeff M. Brudie

Date: 3/1/2013

Time: 10:07 AM

Page 11 of 11

First Judicial District Court - Boundary County

ROA Report

User:
DARMSTRONG

Case: CV-2007-0000266 Current Judge: Jeff M. Brudie

In The Matter Of The Estate Of Melvin Peterson Deceased

In The Matter Of The Estate Of Melvin Peterson Deceased

Date	Code	User	Judge
10/16/2012	CMIN	DARMSTRONG	Jeff M. Brudie
		Court Minutes Hearing type: Oral Argument Hearing date: 10/15/2012 Time: 9:54 am Courtroom: 001 Minutes Clerk: Della Armstrong Party: Cathie Peterson, Attorney: Brent Featherston Party: State of Idaho, Dept. of Health and Welfare, Attorney: W. Cory Cartwright	
11/16/2012	OPIN	DARMSTRONG	Jeff M. Brudie
12/27/2012		JAMIE	Jeff M. Brudie
		Memorandum Opinion Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Featherston Law Firm Receipt number: 0004017 Dated: 12/27/2012 Amount: \$109.00 (Check) For: Peterson, Cathie (other party)	
1/2/2013	APSC	DARMSTRONG	Jeff M. Brudie
	STAT	DARMSTRONG	Jeff M. Brudie
	NTOA	DARMSTRONG	Jeff M. Brudie
	MISC	DARMSTRONG	Jeff M. Brudie
1/15/2013	REQT	DARMSTRONG	Jeff M. Brudie
2/1/2013	ORDR	DARMSTRONG	Jeff M. Brudie
2/4/2013	BNDC	DARMSTRONG	Jeff M. Brudie
		Bond Posted - Cash (Receipt 374 Dated 2/4/2013 for 250.00)	
2/8/2013	MISC	DARMSTRONG	Jeff M. Brudie
		Revised Estimate of Clerk's Record (\$487.50 now due)	
2/13/2013	BONT	DARMSTRONG	Jeff M. Brudie
		Bond Posted for Transcript (Receipt 488 Dated 2/13/2013 for 200.00)	
2/15/2013	BNDC	DARMSTRONG	Jeff M. Brudie
		Bond Posted - Cash (Receipt 508 Dated 2/15/2013 for 437.50)	
2/28/2013	BNDV	DARMSTRONG	Jeff M. Brudie
		Bond Converted (Transaction number 45 dated 2/28/2013 amount 169.00)	
	NOTC	DARMSTRONG	Jeff M. Brudie
		Notice of Transcript Lodged	

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Ste 317
Sandpoint ID 83864
Phone: 208/263-7712
Fax: 208/263-8211

ISB. No. 5413

FILED

2007 JUL 26 A 11:14

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY *Stephan R. Steyer*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate)

of,)

MELVIN PETERSON,)

Deceased:)

Case No. CV-07- 266

APPLICATION FOR INFORMAL
PROBATE AND APPOINTMENT
OF A PERSONAL
REPRESENTATIVE

Fee Category: L(4)

Fee: \$88.00

Your Applicant, CATHIE L. PETERSON, respectfully shows as follows:

1. CATHIE L. PETERSON is the daughter of the Decedent. The Decedent, MELVIN PETERSON, died intestate. CATHIE L. PETERSON and CARL PETERSON are the sole surviving issue and heirs at law of the Decedent. CARL PETERSON has executed a Renouncement Of And Consent To Appointment as Personal Representative in favor of the Applicant to be Personal Representative.

2. MELVIN PETERSON died on March 3, 2007. At the time of his death, the Decedent was domiciled of Boundary County, Idaho.

3. Venue for this proceeding is in Boundary County, Idaho, because the Decedent was domiciled in Boundary County, Idaho.

4. The names and addresses of the heirs of the Decedent are,

<u>Names</u>	<u>Relationship</u>	<u>Age</u>
Cathie L. Peterson P.O. Box 442 Moyie Springs, ID 83845	Daughter	Majority
Carl Peterson 2302 6 th Avenue, Apt 121 Tacoma, WA 98403	Son	Majority

5. No personal representative has been appointed in this State or elsewhere.


6. Your Applicant has not received a demand for notice and is not aware of a demand for notice of any probate or appointment proceeding concerning the Decedent that may have been filed in this State or elsewhere.

7. The time limit for informal probate and appointment of a personal representative has not expired because not more than three (3) years have passed since the Decedent's death.

8. Your Applicant, CATHIE L. PETERSON, hereby accepts appointment as Personal Representative of the estate.

WHEREFORE, your Applicant prays that she be appointed Personal Representative of the Decedent's Estate and that Letters of Personal Representative be issued to her, based upon the renouncement of CARL PETERSON.

DATED this 25th day of July, 2007.


JOHN A. FINNEY, Attorney for
CATHIE L. PETERSON, Applicant

VERIFICATION

STATE OF IDAHO)
 : ss.
County of Boundary)

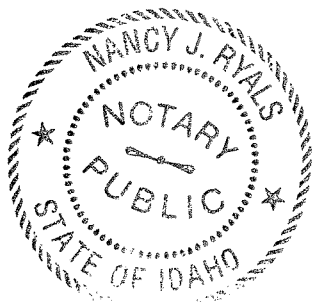
I, CATHIE L. PETERSON, being first duly sworn on oath, depose and say: That I am the Applicant in the foregoing Application For Informal Probate of Will and Appointment of Personal Representative. That I have read the foregoing and know the contents therein to be true to the best of my knowledge, information, and belief.

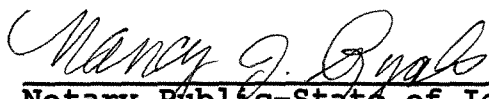
PERSONAL REPRESENTATIVE'S ACCEPTANCE AND OATH

I, CATHIE L. PETERSON, hereby accept the duties of Personal Representative of the above-named estate, and I do solemnly swear that I will perform, according to law, the duties of Personal Representative of the Estate of MELVIN PETERSON.


CATHIE L. PETERSON

SUBSCRIBED AND SWORN to before me this 20th day of July, 2007.




Notary Public-State of Idaho
Residing at Bonanza Ferry Rd
My Commission expires July 17, 2011

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211

ISB No. 5413

FILED

2007 JUL 26 A 11:15

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY *Glenda Poston*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY
MAGISTRATE DIVISION

In the Matter of the Estate	)	Case No. CV-07- <u>266</u>
)	
of,	)	RENOUNCEMENT OF AND
	)	CONSENT TO APPOINTMENT AS
MELVIN PETERSON,	)	PERSONAL REPRESENTATIVE
)	
Deceased.)	
)	
)	
)	

COMES NOW, CARL PETERSON, and states as follows:

1. I am an issue (son) and heir at law of the Decedent.
2. I hereby renounce my right to appointment as Personal Representative of the above-named estate, pursuant to I.C. § 15-3-203.
3. I hereby consent to the appointment of my sister, CATHIE L. PETERSON, as personal representative of the above referenced estate.

Carl Peterson

CARL PETERSON

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211
ISB NO. 5413

STATE OF IDAHO
COUNTY OF BOUNDARY
FILED 7-26-07 AT 3:00pm
GLENDA POSTON, CLERK
BY Hammond
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY
MAGISTRATE DIVISION

In the Matter of the Estate	)	Case No. CV-2007- <u>206</u>
)	
of,	)	STATEMENT OF INFORMAL
	)	PROBATE AND APPOINTMENT
MELVIN PETERSON,	)	OF A PERSONAL
	)	REPRESENTATIVE
Deceased.)	
_____)	

The Application of CATHIE L. PETERSON for the informal probate of the Estate of MELVIN PETERSON, and the appointment of a personal representative having come before the Court, and it appearing that the Application is complete and contains the Applicant's oath or affirmation that the statements contained therein are true to the best of her knowledge and belief, the Court makes the following findings based upon said Application:

1. The Decedent, MELVIN PETERSON, died on March 3, 2007, without a Will, and at least five (5) days have elapsed since the Decedent's death.

2. The Applicant, CATHIE L. PETERSON, is an interested person as defined by the laws of this State by reason of the fact that she is an issue of the Decedent. The Decedent's only other issue is CARL PETERSON and he nominated, renounced and consented to the Applicant's appointment as Personal Representative.

3. Venue is proper because the Decedent was domiciled in Boundary County, Idaho.

4. No notice is necessary, and the Application is not within Idaho Code § 15-3-204.

5. The time for original probate has not expired.

6. A personal representative has not been appointed in this or any other county of this State.

NOW THEREFORE, IT IS ORDERED as follows:

1. The Application for Informal Probate is hereby granted and is hereby admitted to informal probate.

2. The Application for Informal Appointment of a Personal Representative is hereby granted and CATHIE L. PETERSON is hereby appointed as Personal Representative of the Estate of MELVIN PETERSON.

3. Letters of Personal Representative shall be issued to CATHIE L. PETERSON.

DATED this 26 day of July, 2007.



MAGISTRATE

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211

ISB NO. 5413

STATE OF IDAHO
COUNTY OF BOUNDARY
FILED 7-26-07 AT 3:00pm
GLENDA POSTON, CLERK
BY Hammond
DEPUTY CLERK

233549

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate)

of,)

MELVIN PETERSON,)

Deceased.)

Case No. CV-2007-266

LETTERS OF PERSONAL
REPRESENTATIVE

The Estate of MELVIN PETERSON, having been admitted to
informal probate, CATHIE L. PETERSON is hereby appointed
Personal Representative of the Estate.

WITNESS: Justin W. Julian, Magistrate
of the District Court, County of Boundary, State of Idaho, with
the seal of the Court affixed this 26 day of July, 2007.



[Signature]
MAGISTRATE

STATE OF IDAHO }
County of Boundary } SS.
Filed by: Finney Finney & Finney
on 7-30-07 at 3:30
Glenda Poston
County Recorder C. Peterson
By Deputy
Fee \$ 3.00 Pd
Mail to File

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211

I.S.B. 5413

FILED

2007 AUG -8 A 11: 54

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDIA BOSTON, CLERK
BY *J. Van Alstyne*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate)	
	)	Case No. CV-07-266
of,)	
	)	NOTICE TO HEIRS
MELVIN PETERSON,)	
)	
Deceased.)	
)	

COMES NOW, CATHIE L. PETERSON, and pursuant to Idaho Code
§15-3-705, gives notice that she has been appointed Personal
Representative of the Estate of MELVIN PETERSON, deceased, who
died intestate, without a Will, and a copy of this Notice and a
copy of the Application for Informal Probate and Appointment of
a Personal Representative are being mailed to:

Cathie L. Peterson
P.O. Box 442
Moyie Springs, ID 83845

Carl Peterson
2302 6th Avenue, Apt 121
Tacoma, WA 98403

DATED this 6th day of August, 2007.

John A. Finney
JOHN A. FINNEY, Attorney for CATHIE
PETERSON, Personal Representative of
the Estate of MELVIN PETERSON

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing NOTICE TO HEIRS was mailed, postage prepaid, this 6th day of August, 2007, and was addressed to:

Cathie L. Peterson
P.O. Box 442
Moyie Springs, ID 83845

Carl Peterson
2302 6th Avenue, Apt 121
Tacoma, WA 98403

By: John A. F. [Signature]

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211

ISB No. 5413

FILED

2007 AUG -8 A 11: 54

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY *S. Van Alstyne*
DEPUTY CLERK

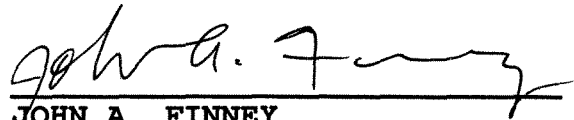
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate)	
	)	Case No. CV-07-266
of,)	
	)	NOTICE TO KNOWN CREDITOR
MELVIN PETERSON,)	
)	
Deceased.)	
)	
)	
)	
)	

NOTICE IS HEREBY GIVEN that CATHIE L. PETERSON has been appointed Personal Representative for the Estate of MELVIN PETERSON. You must present your claim against the deceased or his estate within four (4) months after the date of the first publication of the Notice To Creditors or within 60 days after the mailing of this notice, whichever is later notice or said claims will be forever barred. Claims must either be presented to the undersigned at the address indicated, or filed with the

Clerk of the Court and a copy furnished to the Personal
Representative's attorney.

DATED this 6th day of August, 2007.



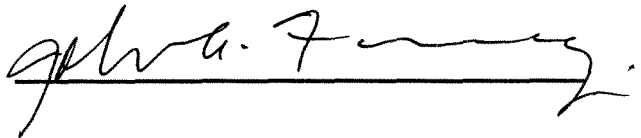
JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
120 E. Lake Street, Ste 317
Sandpoint, Idaho 83864
Attorney for CATHIE L.
PETERSON, Personal
Representative of the Estate
of MELVIN PETERSON

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 2007, I
caused to be served a true and correct copy of the foregoing by
the method indicated below, and addressed to the following:

State of Idaho
Dept of Health & Welfare
P.O. Box 83720
Boise, Idaho 83720

[XX] U.S. MAIL
[] HAND DELIVERED
[] OVERNIGHT MAIL
[] FACSIMILE TO Fax No. _____



LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Division of Human Services

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder, Ste. B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED
2007 NOV 19 P 1:46
STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE ESTATE)
OF)
MELVIN PETERSON,)
Deceased.)
_____)

Case No. CV-2007-266

DEMAND FOR NOTICE

(I.C. § 15-3-204)

EXEMPT: I.C. § 31-3212


COMES NOW, the State of Idaho, Department of Health and Welfare, (hereinafter the "Department") pursuant to Idaho Code § 15-3-204, and hereby files its Demand for Notice of orders or other filings pertaining to the estate of the above-named Decedent. The Department asserts that it has a financial or property interest in said estate based upon the amount of medical assistance benefits which it was required to pay on behalf of the above-named Decedent and/or Decedent's

spouse, and based upon its right to recover the amount of medical assistance benefits paid on behalf of the Decedent and/or Decedent's spouse as set forth at Idaho Code § 56-218.

The Department further requests a copy of the Inventory and Appraisement, upon its preparation within three months of the personal representative's appointment, pursuant to Idaho Code § 15-3-706.

Notice should be given to the Department through its attorney, LARRY L. GOINS, Deputy Attorney General, Division of Human Services, 3276 Elder, Suite B, P.O. Box 83720, Boise, Idaho 83720-0036.

DATED this 15th day of November, 2007.



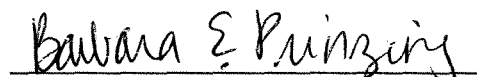
LARRY L. GOINS
Deputy Attorney General

CERTIFICATE OF MAILING

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing DEMAND FOR NOTICE was mailed first class, postage prepaid, on the 15 day of November, 2007, to:

CATHIE PETERSON
C/O JOHN A. FINNEY
120 E LAKE ST STE 317
SANDPOINT ID 83864

BOUNDARY COUNTY CLERK
BOUNDARY COUNTY COURTHOUSE
PO BOX 419
BONNERS FERRY ID 83805



Barbara E. Prinzing, Legal Assistant
Division of Human Services

FILED
2007 NOV 19 P 1:46
STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON CLERK
BY [Signature]
DEPUTY CLERK

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON CLERK
BY WS
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

Case No. CV-2007-266

CLAIM AGAINST ESTATE


(I.C. § 15-3-804)

EXEMPT: I.C. § 31-3212

COMES NOW the State of Idaho, Department of Health and Welfare, by and through its counsel, LARRY L. GOINS, Deputy Attorney General, and hereby makes claim against the above-captioned estate. This claim is based upon the Claimant's statutory right to recover the amount of medical assistance paid on the Decedent's behalf, as set forth at Idaho Code § 56-218. The Claimant has paid medical assistance benefits on behalf of the Decedent in the amount of **\$171,134.28** as of

November 15, 2007. To the extent that the Claimant is obligated to make further medical assistance payments on the Decedent's behalf, it reserves the right to supplement its claim in this proceeding.

DATED this 15th day of November, 2007.



LARRY L. GOINS
Deputy Attorney General

VERIFICATION

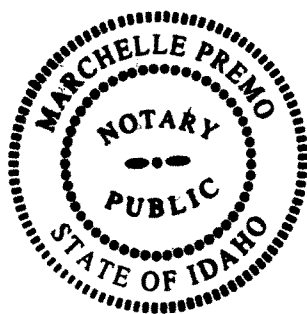
STATE OF IDAHO)
) ss.
County of Ada)


JULIE RAICHART, being first duly sworn, deposes and states: That I am the Claimant's Paralegal; that I have read the above and foregoing claim against the decedent's estate and know the contents thereof; and that, to my knowledge and belief, the facts stated therein are true and correct.



JULIE RAICHART, Paralegal

SUBSCRIBED AND SWORN to before me this 15th day of November, 2007.





Notary Public for Idaho
Commission Expires: 8/16/2013

CERTIFICATE OF MAILING

THE UNDERSIGNED HEREBY CERTIFIES that duplicate originals of the foregoing CLAIM AGAINST ESTATE were mailed first class, postage prepaid, on the 15 day of November, 2007, to:

CATHIE PETERSON
C/O JOHN A. FINNEY
120 E LAKE ST STE 317
SANDPOINT ID 83864

BOUNDARY COUNTY CLERK
BOUNDARY COUNTY COURTHOUSE
PO BOX 419
BONNERS FERRY ID 83805

Barbara E. Prinzing
Barbara E. Prinzing, Legal Assistant
Division of Human Services

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211
I.S.B. #5413

FILED

2007 NOV 30 P 12:24

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA P. STOTOM, CLERK
BY W&A
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY
MAGISTRATE DIVISION

In the Matter of the Estate of,	)	Case No. CV-2007-266
)	
	)	DISALLOWANCE OF
MELVIN PETERSON,	)	CREDITOR'S CLAIM AND
	)	REQUEST FOR ITEMIZATION
Deceased.)	
)	

TO: State of Idaho, Department of Health and Welfare:

Your claim against the Estate, dated November 15, 2007, is disallowed and denied. This disallowance further gives you notice of the impending bar of Idaho Code §15-3-806 unless, as claimant, you take the action set forth in said Idaho Code §15-3-806(a).

Further, you are requested to itemize and document your claim that you have paid ONE HUNDRED SEVENTY ONE THOUSAND ONE HUNDRED THIRTY FOUR AND 28/100 DOLLARS (\$171,134.28) as medical assistance benefits on behalf of the Decedent.

DATED this 28th day of November, 2007.

John A. Finney
JOHN A. FINNEY
Attorney for CATHIE L. PETERSON,
Personal Representative of the
Estate of MELVIN PETERSON

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 28th day of November, 2007, and was addressed to:

Larry L. Goins
Deputy Attorney General
Division of Human Services
P.O. Box 83720
Boise, ID 83720-0036

Cathie L. Peterson
P.O. Box 442
Moyie Springs, ID 83845

By: _____

Christine D. Berry

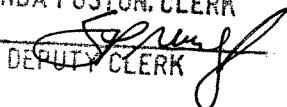
LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Division of Human Services

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder, Ste. B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED

2007 DEC 10 A 9:04

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY  DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

IN THE MATTER OF THE ESTATE)	
OF)	Case No. CV-2007-266
)	
MELVIN PETERSON,)	AMENDED CLAIM
)	AGAINST ESTATE
)	
)	(Idaho Code § 15-3-804)
Deceased.)	
_____)	Fee: Exempt (Idaho Code § 31-3212)


COMES NOW the State of Idaho, Department of Health and Welfare (hereinafter "Department"), by and through undersigned counsel, LARRY L. GOINS, Deputy Attorney General, hereby amends its claim against the estate in the above entitled matter filed herein on November 19, 2007.

This Amended Claim Against Estate is based upon the Department receiving an updated *Client History and Profile* on November 30, 2007, indicating that the Department paid medical

assistance benefits on behalf of the Decedent in the amount of **\$171,386.94**, a copy of which is attached hereto as Exhibit "A" and is incorporated by reference herein.

This claim is based upon the Claimant's statutory right to recover the amount of medical assistance paid on the Decedent's behalf, as set forth at Idaho Code § 56-218. To the extent that the Claimant is obligated to make further medical assistance payments on the Decedent's behalf, it reserves the right to supplement its claim in this proceeding.

DATED this 4th day of DECEMBER, 2007.


LARRY L. GOINS
Deputy Attorney General

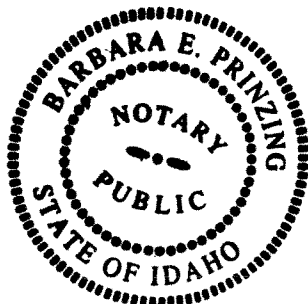
VERIFICATION

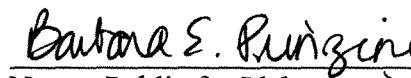
STATE OF IDAHO)
) ss.
County of Ada)

JULIE RAICHART, after being first duly sworn, deposes and states: That I am the Claimant's Paralegal; and I have read the above and foregoing claim against the decedent's estate and know the contents thereof; and that, to the best of my knowledge and belief, the facts stated therein are true and correct.


JULIE RAICHART, Paralegal

SUBSCRIBED AND SWORN to before me this 4 day of DECEMBER, 2007.





Notary Public for Idaho,
Commission Expires: 8-14-13

CERTIFICATE OF MAILING

THE UNDERSIGNED HEREBY CERTIFIES that duplicate originals of the foregoing **AMENDED CLAIM AGAINST ESTATE** were mailed first class, postage prepaid, on the 4~~th~~ day of DECEMBER, 2007, to:

CATHIE PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE ST STE 317
SANDPOINT ID 83864

BOUNDARY COUNTY CLERK
BOUNDARY COUNTY COURTHOUSE
PO BOX 419
BONNERS FERRY ID 83805



Marchelle Premo, Legal Assistant
Department of Health & Welfare



State of Idaho
Department of Health and Welfare
Client History & Profile
Claims for From Date of Service
5/21/1988 - 11/30/2007

Run Date: 11/30/2007

Report Number: HWMF_1755A_Client History & Profile

1199099 MELVIN PETERSON

Provider	FDOS	TDOS	Billed Am	Paid Amt
2003				
BOUNDARY COMMUNITY HOSPITAL	3/1/2003	3/1/2003	\$16.20	\$5.02
BOUNDARY COMMUNITY HOSPITAL	3/1/2003	3/1/2003	\$221.03	\$85.07
BOUNDARY COMMUNITY HOSPITAL	3/1/2003	3/31/2003	\$4,743.00	\$3,337.12
BOUNDARY COMMUNITY HOSPITAL	4/1/2003	4/1/2003	\$15.00	\$6.13
BOUNDARY COMMUNITY HOSPITAL	4/1/2003	4/1/2003	\$30.00	\$13.94
BOUNDARY COMMUNITY HOSPITAL	4/1/2003	4/1/2003	\$74.40	\$26.13
BOUNDARY COMMUNITY HOSPITAL	4/1/2003	4/1/2003	\$213.90	\$79.25
BOUNDARY COMMUNITY HOSPITAL	4/1/2003	4/1/2003	\$258.16	\$58.48
BOUNDARY COMMUNITY HOSPITAL	4/1/2003	4/30/2003	\$4,650.00	\$3,244.12
BOUNDARY COMMUNITY HOSPITAL	5/1/2003	5/1/2003	\$7.36	\$7.36
BOUNDARY COMMUNITY HOSPITAL	5/1/2003	5/1/2003	\$14.28	\$8.57
BOUNDARY COMMUNITY HOSPITAL	5/1/2003	5/1/2003	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	5/1/2003	5/1/2003	\$59.00	\$9.60
BOUNDARY COMMUNITY HOSPITAL	5/1/2003	5/1/2003	\$85.56	\$34.66
BOUNDARY COMMUNITY HOSPITAL	5/1/2003	5/1/2003	\$117.99	\$54.05
BOUNDARY COMMUNITY HOSPITAL	5/1/2003	5/1/2003	\$428.73	\$93.85
BOUNDARY COMMUNITY HOSPITAL	5/1/2003	5/31/2003	\$4,805.00	\$3,341.12
BOUNDARY COMMUNITY HOSPITAL	6/1/2003	6/1/2003	\$12.60	\$8.15
BOUNDARY COMMUNITY HOSPITAL	6/1/2003	6/1/2003	\$30.00	\$13.94
BOUNDARY COMMUNITY HOSPITAL	6/1/2003	6/1/2003	\$67.20	\$26.13
BOUNDARY COMMUNITY HOSPITAL	6/1/2003	6/1/2003	\$104.22	\$29.32
BOUNDARY COMMUNITY HOSPITAL	6/1/2003	6/1/2003	\$186.30	\$82.49
BOUNDARY COMMUNITY HOSPITAL	6/1/2003	6/1/2003	\$414.90	\$90.98
BOUNDARY COMMUNITY HOSPITAL	6/1/2003	6/30/2003	\$4,650.00	\$3,186.12
BOUNDARY COMMUNITY HOSPITAL	7/1/2003	7/1/2003	\$25.20	\$11.35
BOUNDARY COMMUNITY HOSPITAL	7/1/2003	7/1/2003	\$30.00	\$7.31
BOUNDARY COMMUNITY HOSPITAL	7/1/2003	7/1/2003	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	7/1/2003	7/1/2003	\$69.44	\$26.84
BOUNDARY COMMUNITY HOSPITAL	7/1/2003	7/1/2003	\$104.22	\$29.32
BOUNDARY COMMUNITY HOSPITAL	7/1/2003	7/1/2003	\$192.51	\$85.07
BOUNDARY COMMUNITY HOSPITAL	7/1/2003	7/1/2003	\$428.73	\$93.85
BOUNDARY COMMUNITY HOSPITAL	7/1/2003	7/31/2003	\$4,805.00	\$3,341.12
BOUNDARY COMMUNITY HOSPITAL	8/1/2003	8/1/2003	\$3.56	\$3.56
BOUNDARY COMMUNITY HOSPITAL	8/1/2003	8/1/2003	\$25.20	\$11.35
BOUNDARY COMMUNITY HOSPITAL	8/1/2003	8/1/2003	\$30.00	\$7.31
BOUNDARY COMMUNITY HOSPITAL	8/1/2003	8/1/2003	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	8/1/2003	8/1/2003	\$69.44	\$26.84
BOUNDARY COMMUNITY HOSPITAL	8/1/2003	8/1/2003	\$192.51	\$85.07
BOUNDARY COMMUNITY HOSPITAL	8/1/2003	8/31/2003	\$4,805.00	\$3,150.03
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/1/2003	\$3.56	\$3.56
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/1/2003	\$15.40	\$12.82
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/1/2003	\$29.50	\$13.79
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/1/2003	\$30.00	\$11.35
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/1/2003	\$31.54	\$19.03
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/1/2003	\$60.00	\$6.13
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/1/2003	\$122.96	\$79.90

EXHIBIT

33

<u>Provider</u>	<u>FDOS</u>	<u>TDOS</u>	<u>Billed Am</u>	<u>Paid Amt</u>
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/1/2003	\$244.80	\$8.76
BOUNDARY COMMUNITY HOSPITAL	9/1/2003	9/30/2003	\$4,650.00	\$2,995.03
BOUNDARY COMMUNITY HOSPITAL	10/1/2003	10/1/2003	\$30.00	\$11.35
BOUNDARY COMMUNITY HOSPITAL	10/1/2003	10/1/2003	\$43.40	\$27.15
BOUNDARY COMMUNITY HOSPITAL	10/1/2003	10/1/2003	\$60.00	\$7.31
BOUNDARY COMMUNITY HOSPITAL	10/1/2003	10/1/2003	\$114.24	\$45.09
BOUNDARY COMMUNITY HOSPITAL	10/1/2003	10/1/2003	\$127.20	\$82.49
BOUNDARY COMMUNITY HOSPITAL	10/1/2003	10/31/2003	\$4,805.00	\$3,150.03
BOUNDARY COMMUNITY HOSPITAL	10/9/2003	10/9/2003	\$72.50	\$0.00
BOUNDARY COMMUNITY HOSPITAL	10/15/2003	10/15/2003	\$50.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	10/16/2003	10/16/2003	\$25.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	10/20/2003	10/20/2003	\$8.14	\$0.00
BOUNDARY COMMUNITY HOSPITAL	10/20/2003	10/20/2003	\$34.09	\$0.00
BOUNDARY COMMUNITY HOSPITAL	10/20/2003	10/20/2003	\$63.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	10/22/2003	10/22/2003	\$100.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/1/2003	\$3.56	\$3.56
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/1/2003	\$6.92	\$6.92
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/1/2003	\$13.88	\$13.88
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/1/2003	\$15.00	\$11.35
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/1/2003	\$29.00	\$13.64
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/1/2003	\$30.00	\$7.31
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/1/2003	\$42.00	\$26.43
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/1/2003	\$118.72	\$77.32
BOUNDARY COMMUNITY HOSPITAL	11/1/2003	11/30/2003	\$4,650.00	\$2,995.03
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$1.50	\$1.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$2.50	\$2.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$2.50	\$2.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$12.72	\$12.69
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$13.50	\$8.99
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$30.00	\$6.13
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$50.60	\$21.42
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$160.89	\$93.85
BOUNDARY COMMUNITY HOSPITAL	12/1/2003	12/1/2003	\$190.00	\$71.86
BOUNDARY COMMUNITY HOSPITAL	12/5/2003	12/5/2003	\$7.50	\$7.50
BOUNDARY COMMUNITY HOSPITAL	12/5/2003	12/5/2003	\$15.00	\$6.70
BOUNDARY COMMUNITY HOSPITAL	12/5/2003	12/5/2003	\$150.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	12/5/2003	12/31/2003	\$4,239.00	\$4,186.35
BOUNDARY COMMUNITY HOSPITAL	12/8/2003	12/8/2003	\$1.50	\$1.50
BOUNDARY COMMUNITY HOSPITAL	12/8/2003	12/8/2003	\$142.83	\$64.39
BOUNDARY COMMUNITY HOSPITAL	12/26/2003	12/26/2003	\$3.56	\$3.56
BOUNDARY COMMUNITY HOSPITAL	12/4/2003	12/4/2003	\$934.00	\$66.43
CURTIS, JAMES	7/9/2003	7/9/2003	\$68.00	\$0.00
KAVANAUGH, KEVIN	12/5/2003	12/5/2003	\$325.00	\$0.00
KOOTENAI COUNTY EMERGENCY MEDICAL SERVIC	12/5/2003	12/5/2003	\$624.00	\$15.78
KOOTENAI COUNTY EMERGENCY MEDICAL SERVIC	12/3/2003	12/3/2003	\$28.20	\$1.63
KOOTENAI MEDICAL CENTER	12/3/2003	12/5/2003	\$840.00	\$840.00
KOOTENAI MEDICAL CENTER	12/3/2003	12/3/2003	\$38.00	\$4.42
PATAKY, JAMES	12/3/2003	12/3/2003	\$216.00	\$27.25
PATAKY, JAMES	12/4/2003	12/4/2003	\$50.00	\$5.91
PATAKY, JAMES	12/5/2003	12/5/2003	\$93.00	\$10.21
PATAKY, JAMES				
				\$35,869.88

2004

BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$3.56	\$3.56
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$3.56	\$3.56
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$15.00	\$6.70

<u>Provider</u>	<u>FDOS</u>	<u>TDOS</u>	<u>Billed Am</u>	<u>Paid Amt</u>
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$15.00	\$6.70
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$68.20	\$27.14
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$68.20	\$27.15
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$192.51	\$85.20
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$192.51	\$87.87
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$288.84	\$119.38
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/1/2004	\$288.84	\$119.38
BOUNDARY COMMUNITY HOSPITAL	1/1/2004	1/31/2004	\$4,867.00	\$3,187.03
BOUNDARY COMMUNITY HOSPITAL	1/14/2004	1/14/2004	\$50.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	1/29/2004	1/29/2004	\$110.00	\$12.58
BOUNDARY COMMUNITY HOSPITAL	2/1/2004	2/1/2004	\$116.76	\$78.55
BOUNDARY COMMUNITY HOSPITAL	2/1/2004	2/29/2004	\$4,553.00	\$2,873.03
BOUNDARY COMMUNITY HOSPITAL	2/2/2004	2/2/2004	\$12.60	\$11.25
BOUNDARY COMMUNITY HOSPITAL	2/2/2004	2/2/2004	\$15.00	\$11.35
BOUNDARY COMMUNITY HOSPITAL	2/2/2004	2/2/2004	\$15.00	\$6.70
BOUNDARY COMMUNITY HOSPITAL	2/2/2004	2/2/2004	\$22.40	\$17.09
BOUNDARY COMMUNITY HOSPITAL	2/2/2004	2/2/2004	\$29.00	\$13.64
BOUNDARY COMMUNITY HOSPITAL	2/2/2004	2/2/2004	\$173.88	\$79.85
BOUNDARY COMMUNITY HOSPITAL	2/2/2004	2/2/2004	\$236.64	\$88.11
BOUNDARY COMMUNITY HOSPITAL	2/3/2004	2/3/2004	\$50.00	\$6.26
BOUNDARY COMMUNITY HOSPITAL	3/1/2004	3/1/2004	\$15.00	\$6.70
BOUNDARY COMMUNITY HOSPITAL	3/1/2004	3/1/2004	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	3/1/2004	3/1/2004	\$43.40	\$28.48
BOUNDARY COMMUNITY HOSPITAL	3/1/2004	3/1/2004	\$192.51	\$87.87
BOUNDARY COMMUNITY HOSPITAL	3/1/2004	3/1/2004	\$252.96	\$93.85
BOUNDARY COMMUNITY HOSPITAL	3/1/2004	3/1/2004	\$377.58	\$109.29
BOUNDARY COMMUNITY HOSPITAL	3/1/2004	3/31/2004	\$4,867.00	\$3,187.03
BOUNDARY COMMUNITY HOSPITAL	4/1/2004	4/1/2004	\$6.34	\$5.50
BOUNDARY COMMUNITY HOSPITAL	4/1/2004	4/1/2004	\$15.00	\$6.70
BOUNDARY COMMUNITY HOSPITAL	4/1/2004	4/1/2004	\$30.00	\$13.94
BOUNDARY COMMUNITY HOSPITAL	4/1/2004	4/1/2004	\$42.00	\$27.72
BOUNDARY COMMUNITY HOSPITAL	4/1/2004	4/1/2004	\$159.90	\$85.20
BOUNDARY COMMUNITY HOSPITAL	4/1/2004	4/1/2004	\$244.80	\$90.98
BOUNDARY COMMUNITY HOSPITAL	4/1/2004	4/1/2004	\$365.40	\$206.90
BOUNDARY COMMUNITY HOSPITAL	4/1/2004	4/30/2004	\$4,710.00	\$3,030.03
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$4.20	\$4.20
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$6.34	\$5.50
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$12.20	\$12.20
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$15.00	\$6.70
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$46.58	\$26.96
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$165.23	\$77.05
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$178.56	\$93.85
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/1/2004	\$243.18	\$146.31
BOUNDARY COMMUNITY HOSPITAL	5/1/2004	5/31/2004	\$4,867.00	\$3,187.03
BOUNDARY COMMUNITY HOSPITAL	6/1/2004	6/1/2004	\$6.34	\$5.50
BOUNDARY COMMUNITY HOSPITAL	6/1/2004	6/1/2004	\$15.00	\$6.46
BOUNDARY COMMUNITY HOSPITAL	6/1/2004	6/1/2004	\$29.50	\$13.79
BOUNDARY COMMUNITY HOSPITAL	6/1/2004	6/1/2004	\$51.04	\$27.74
BOUNDARY COMMUNITY HOSPITAL	6/1/2004	6/1/2004	\$63.72	\$63.72
BOUNDARY COMMUNITY HOSPITAL	6/1/2004	6/1/2004	\$90.90	\$74.73
BOUNDARY COMMUNITY HOSPITAL	6/1/2004	6/1/2004	\$108.58	\$90.02
BOUNDARY COMMUNITY HOSPITAL	6/1/2004	6/30/2004	\$4,710.00	\$3,030.03
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/1/2004	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/1/2004	\$14.98	\$14.98

<u>Provider</u>	<u>FDOS</u>	<u>TDOS</u>	<u>Billed Am</u>	<u>Paid Amt</u>
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/1/2004	\$15.00	\$6.46
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/1/2004	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/1/2004	\$54.56	\$29.31
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/1/2004	\$66.96	\$66.96
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/1/2004	\$93.93	\$77.05
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/1/2004	\$113.46	\$93.85
BOUNDARY COMMUNITY HOSPITAL	7/1/2004	7/31/2004	\$4,867.00	\$3,187.03
BOUNDARY COMMUNITY HOSPITAL	7/24/2004	7/24/2004	\$50.00	\$7.07
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$5.35	\$5.35
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$15.00	\$6.46
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$20.52	\$20.52
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$23.76	\$23.76
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$54.56	\$29.31
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$93.93	\$77.05
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/1/2004	\$113.46	\$93.85
BOUNDARY COMMUNITY HOSPITAL	8/1/2004	8/31/2004	\$4,867.00	\$3,187.03
BOUNDARY COMMUNITY HOSPITAL	8/10/2004	8/10/2004	\$110.00	\$14.29
BOUNDARY COMMUNITY HOSPITAL	8/10/2004	8/10/2004	\$140.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	8/10/2004	8/10/2004	\$140.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	8/13/2004	8/13/2004	\$30.00	\$1.28
BOUNDARY COMMUNITY HOSPITAL	8/13/2004	8/13/2004	\$132.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$15.00	\$7.97
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$20.74	\$18.24
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$30.00	\$7.98
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$30.00	\$13.94
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$32.40	\$32.40
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$36.00	\$36.00
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$52.80	\$28.53
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/1/2004	\$90.90	\$74.73
BOUNDARY COMMUNITY HOSPITAL	9/1/2004	9/30/2004	\$4,710.00	\$3,030.03
BOUNDARY COMMUNITY HOSPITAL	10/1/2004	10/1/2004	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	10/1/2004	10/1/2004	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	10/1/2004	10/1/2004	\$33.48	\$33.48
BOUNDARY COMMUNITY HOSPITAL	10/1/2004	10/1/2004	\$46.50	\$46.50
BOUNDARY COMMUNITY HOSPITAL	10/1/2004	10/1/2004	\$54.56	\$29.31
BOUNDARY COMMUNITY HOSPITAL	10/1/2004	10/1/2004	\$93.93	\$77.05
BOUNDARY COMMUNITY HOSPITAL	10/1/2004	10/31/2004	\$4,867.00	\$3,162.85
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/1/2004	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/1/2004	\$15.00	\$6.46
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/1/2004	\$30.00	\$13.94
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/1/2004	\$32.40	\$32.40
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/1/2004	\$34.00	\$14.29
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/1/2004	\$44.50	\$44.50
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/1/2004	\$52.80	\$13.36
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/1/2004	\$90.90	\$74.73
BOUNDARY COMMUNITY HOSPITAL	11/1/2004	11/30/2004	\$4,710.00	\$3,006.63
BOUNDARY COMMUNITY HOSPITAL	12/1/2004	12/1/2004	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2004	12/1/2004	\$14.50	\$13.08
BOUNDARY COMMUNITY HOSPITAL	12/1/2004	12/1/2004	\$15.00	\$6.46
BOUNDARY COMMUNITY HOSPITAL	12/1/2004	12/1/2004	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	12/1/2004	12/1/2004	\$33.48	\$33.48
BOUNDARY COMMUNITY HOSPITAL	12/1/2004	12/1/2004	\$46.50	\$46.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2004	12/1/2004	\$93.93	\$77.05
BOUNDARY COMMUNITY HOSPITAL	12/1/2004	12/31/2004	\$4,867.00	\$3,162.85

<u>Provider</u>	<u>FDOS</u>	<u>TDOS</u>	<u>Billed Am</u>	<u>Paid Amt</u>
EVERGREEN PHARMACEUTICAL	1/1/2004	1/1/2004	\$39.50	\$9.68
EVERGREEN PHARMACEUTICAL	1/1/2004	1/1/2004	\$63.50	\$46.00
EVERGREEN PHARMACEUTICAL	2/1/2004	2/1/2004	\$79.00	\$0.00
EVERGREEN PHARMACEUTICAL	2/1/2004	2/1/2004	\$127.00	\$30.52
EVERGREEN PHARMACEUTICAL	5/1/2004	5/1/2004	\$79.00	\$0.00
EVERGREEN PHARMACEUTICAL	5/1/2004	5/1/2004	\$127.00	\$17.12
EVERGREEN PHARMACEUTICAL	6/1/2004	6/1/2004	\$79.00	\$0.00
EVERGREEN PHARMACEUTICAL	6/1/2004	6/1/2004	\$127.00	\$17.12
EVERGREEN PHARMACEUTICAL	7/1/2004	7/1/2004	\$79.00	\$0.00
EVERGREEN PHARMACEUTICAL	7/1/2004	7/1/2004	\$127.00	\$7.94
EVERGREEN PHARMACEUTICAL	7/26/2004	7/26/2004	\$12.62	\$11.36
EVERGREEN PHARMACEUTICAL	8/1/2004	8/1/2004	\$12.62	\$2.18
EVERGREEN PHARMACEUTICAL	11/1/2004	11/1/2004	\$12.62	\$2.18
EVERGREEN PHARMACEUTICAL	12/1/2004	12/1/2004	\$12.62	\$2.18
HOSTETLER, MICHAEL	1/14/2004	1/14/2004	\$68.00	\$0.70
ORME, ERIC	7/14/2004	7/14/2004	\$68.00	\$0.00
ORME, ERIC	10/13/2004	10/13/2004	\$68.00	\$0.00
STIFTER, WILLIAM	4/14/2004	4/14/2004	\$68.00	\$0.00

\$41,104.31

2005

BENNETT, WILLIAM	10/12/2005	10/12/2005	\$68.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	1/1/2005	1/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	1/1/2005	1/1/2005	\$13.00	\$12.24
BOUNDARY COMMUNITY HOSPITAL	1/1/2005	1/1/2005	\$30.00	\$7.98
BOUNDARY COMMUNITY HOSPITAL	1/1/2005	1/1/2005	\$31.00	\$14.24
BOUNDARY COMMUNITY HOSPITAL	1/1/2005	1/1/2005	\$33.48	\$33.48
BOUNDARY COMMUNITY HOSPITAL	1/1/2005	1/1/2005	\$46.50	\$46.50
BOUNDARY COMMUNITY HOSPITAL	1/1/2005	1/1/2005	\$93.93	\$77.05
BOUNDARY COMMUNITY HOSPITAL	1/1/2005	1/31/2005	\$4,867.00	\$3,156.03
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/1/2005	\$2.50	\$2.50
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/1/2005	\$12.00	\$11.28
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/1/2005	\$15.00	\$6.46
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/1/2005	\$28.00	\$15.81
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/1/2005	\$42.00	\$25.60
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/1/2005	\$84.84	\$59.06
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/1/2005	\$155.40	\$127.17
BOUNDARY COMMUNITY HOSPITAL	2/1/2005	2/28/2005	\$4,508.00	\$2,797.03
BOUNDARY COMMUNITY HOSPITAL	2/27/2005	2/27/2005	\$100.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	3/1/2005	3/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	3/1/2005	3/1/2005	\$13.50	\$12.07
BOUNDARY COMMUNITY HOSPITAL	3/1/2005	3/1/2005	\$31.00	\$16.97
BOUNDARY COMMUNITY HOSPITAL	3/1/2005	3/1/2005	\$73.26	\$32.23
BOUNDARY COMMUNITY HOSPITAL	3/1/2005	3/1/2005	\$93.93	\$64.86
BOUNDARY COMMUNITY HOSPITAL	3/1/2005	3/1/2005	\$172.05	\$140.26
BOUNDARY COMMUNITY HOSPITAL	3/1/2005	3/31/2005	\$4,991.00	\$3,862.41
BOUNDARY COMMUNITY HOSPITAL	4/1/2005	4/1/2005	\$7.50	\$7.50
BOUNDARY COMMUNITY HOSPITAL	4/1/2005	4/1/2005	\$15.00	\$6.46
BOUNDARY COMMUNITY HOSPITAL	4/1/2005	4/1/2005	\$24.24	\$20.40
BOUNDARY COMMUNITY HOSPITAL	4/1/2005	4/1/2005	\$44.40	\$39.86
BOUNDARY COMMUNITY HOSPITAL	4/1/2005	4/7/2005	\$1,127.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$12.41	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$16.07	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$16.94	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$28.40	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$29.00	\$0.00

<u>Provider</u>	<u>FDOS</u>	<u>TDOS</u>	<u>Billed Am</u>	<u>Paid Amt</u>
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$31.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$31.20	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$37.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$59.28	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$77.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$104.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$140.15	\$16.69
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$146.11	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$226.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$227.09	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$248.12	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/8/2005	\$250.25	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/8/2005	4/12/2005	\$912.00	\$912.00
BOUNDARY COMMUNITY HOSPITAL	4/9/2005	4/9/2005	\$52.00	\$1.69
BOUNDARY COMMUNITY HOSPITAL	4/10/2005	4/10/2005	\$75.00	\$0.04
BOUNDARY COMMUNITY HOSPITAL	4/11/2005	4/11/2005	\$75.00	\$0.04
BOUNDARY COMMUNITY HOSPITAL	4/12/2005	4/12/2005	\$0.50	\$0.50
BOUNDARY COMMUNITY HOSPITAL	4/12/2005	4/12/2005	\$8.50	\$8.50
BOUNDARY COMMUNITY HOSPITAL	4/12/2005	4/12/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	4/12/2005	4/12/2005	\$21.42	\$21.42
BOUNDARY COMMUNITY HOSPITAL	4/12/2005	4/12/2005	\$99.90	\$83.51
BOUNDARY COMMUNITY HOSPITAL	4/12/2005	4/12/2005	\$150.00	\$12.84
BOUNDARY COMMUNITY HOSPITAL	4/12/2005	4/12/2005	\$166.50	\$6.46
BOUNDARY COMMUNITY HOSPITAL	4/12/2005	4/30/2005	\$3,059.00	\$1,348.03
BOUNDARY COMMUNITY HOSPITAL	4/13/2005	4/13/2005	\$117.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/14/2005	4/14/2005	\$8.47	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/14/2005	4/14/2005	\$16.07	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/14/2005	4/14/2005	\$30.96	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/14/2005	4/14/2005	\$31.20	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/14/2005	4/14/2005	\$37.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/14/2005	4/14/2005	\$54.08	\$0.00
BOUNDARY COMMUNITY HOSPITAL	4/14/2005	4/14/2005	\$77.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	5/1/2005	5/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	5/1/2005	5/1/2005	\$15.00	\$6.36
BOUNDARY COMMUNITY HOSPITAL	5/1/2005	5/1/2005	\$15.50	\$13.13
BOUNDARY COMMUNITY HOSPITAL	5/1/2005	5/1/2005	\$15.50	\$10.96
BOUNDARY COMMUNITY HOSPITAL	5/1/2005	5/1/2005	\$93.93	\$64.86
BOUNDARY COMMUNITY HOSPITAL	5/1/2005	5/1/2005	\$166.50	\$6.46
BOUNDARY COMMUNITY HOSPITAL	5/1/2005	5/1/2005	\$172.05	\$140.26
BOUNDARY COMMUNITY HOSPITAL	5/1/2005	5/31/2005	\$4,991.00	\$3,280.03
BOUNDARY COMMUNITY HOSPITAL	5/28/2005	5/28/2005	\$71.00	\$6.44
BOUNDARY COMMUNITY HOSPITAL	6/1/2005	6/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	6/1/2005	6/1/2005	\$15.00	\$12.86
BOUNDARY COMMUNITY HOSPITAL	6/1/2005	6/1/2005	\$22.25	\$16.01
BOUNDARY COMMUNITY HOSPITAL	6/1/2005	6/1/2005	\$27.27	\$22.34
BOUNDARY COMMUNITY HOSPITAL	6/1/2005	6/1/2005	\$166.50	\$135.90
BOUNDARY COMMUNITY HOSPITAL	6/1/2005	6/30/2005	\$4,830.00	\$3,119.03
BOUNDARY COMMUNITY HOSPITAL	6/3/2005	6/3/2005	\$71.00	\$6.44
BOUNDARY COMMUNITY HOSPITAL	6/6/2005	6/6/2005	\$100.00	\$10.70
BOUNDARY COMMUNITY HOSPITAL	6/20/2005	6/20/2005	\$288.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	6/30/2005	6/30/2005	\$20.25	\$0.00
BOUNDARY COMMUNITY HOSPITAL	6/30/2005	6/30/2005	\$27.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	6/30/2005	6/30/2005	\$32.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	6/30/2005	6/30/2005	\$46.80	\$0.00
BOUNDARY COMMUNITY HOSPITAL	7/1/2005	7/1/2005	\$3.00	\$3.00
BOUNDARY COMMUNITY HOSPITAL	7/1/2005	7/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	7/1/2005	7/1/2005	\$12.00	\$11.23

<u>Provider</u>	<u>FDOS</u>	<u>TDOS</u>	<u>Billed Am</u>	<u>Paid Amt</u>
BOUNDARY COMMUNITY HOSPITAL	7/1/2005	7/1/2005	\$15.50	\$10.96
BOUNDARY COMMUNITY HOSPITAL	7/1/2005	7/1/2005	\$22.96	\$7.34
BOUNDARY COMMUNITY HOSPITAL	7/1/2005	7/1/2005	\$23.25	\$16.50
BOUNDARY COMMUNITY HOSPITAL	7/1/2005	7/1/2005	\$166.50	\$6.46
BOUNDARY COMMUNITY HOSPITAL	7/1/2005	7/31/2005	\$4,991.00	\$3,280.03
BOUNDARY COMMUNITY HOSPITAL	7/2/2005	7/2/2005	\$80.80	\$31.11
BOUNDARY COMMUNITY HOSPITAL	7/29/2005	7/29/2005	\$100.00	\$10.70
BOUNDARY COMMUNITY HOSPITAL	8/1/2005	8/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	8/1/2005	8/1/2005	\$15.50	\$13.07
BOUNDARY COMMUNITY HOSPITAL	8/1/2005	8/1/2005	\$15.50	\$10.96
BOUNDARY COMMUNITY HOSPITAL	8/1/2005	8/1/2005	\$23.25	\$16.50
BOUNDARY COMMUNITY HOSPITAL	8/1/2005	8/1/2005	\$36.60	\$35.30
BOUNDARY COMMUNITY HOSPITAL	8/1/2005	8/1/2005	\$193.05	\$119.81
BOUNDARY COMMUNITY HOSPITAL	8/1/2005	8/1/2005	\$333.00	\$7.98
BOUNDARY COMMUNITY HOSPITAL	8/1/2005	8/31/2005	\$4,991.00	\$3,280.03
BOUNDARY COMMUNITY HOSPITAL	9/1/2005	9/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	9/1/2005	9/1/2005	\$15.00	\$12.81
BOUNDARY COMMUNITY HOSPITAL	9/1/2005	9/1/2005	\$15.00	\$10.76
BOUNDARY COMMUNITY HOSPITAL	9/1/2005	9/1/2005	\$22.50	\$16.01
BOUNDARY COMMUNITY HOSPITAL	9/1/2005	9/1/2005	\$36.60	\$35.30
BOUNDARY COMMUNITY HOSPITAL	9/1/2005	9/1/2005	\$166.50	\$6.46
BOUNDARY COMMUNITY HOSPITAL	9/1/2005	9/1/2005	\$297.00	\$186.79
BOUNDARY COMMUNITY HOSPITAL	9/1/2005	9/30/2005	\$4,830.00	\$3,119.03
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/1/2005	\$1.00	\$1.00
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/1/2005	\$15.00	\$12.81
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/1/2005	\$15.50	\$10.96
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/1/2005	\$23.25	\$16.50
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/1/2005	\$37.82	\$36.32
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/1/2005	\$172.05	\$6.51
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/1/2005	\$306.90	\$192.85
BOUNDARY COMMUNITY HOSPITAL	10/1/2005	10/31/2005	\$4,991.00	\$3,280.03
BOUNDARY COMMUNITY HOSPITAL	10/20/2005	10/20/2005	\$10.76	\$10.76
BOUNDARY COMMUNITY HOSPITAL	10/20/2005	10/20/2005	\$71.00	\$6.44
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$4.00	\$4.00
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$9.68	\$7.04
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$11.00	\$10.71
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$15.00	\$10.76
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$17.70	\$17.70
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$22.50	\$16.01
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$51.60	\$16.22
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$166.50	\$140.48
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$166.50	\$6.46
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/1/2005	\$297.00	\$186.79
BOUNDARY COMMUNITY HOSPITAL	11/1/2005	11/30/2005	\$4,830.00	\$3,119.03
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$2.00	\$2.00
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$3.50	\$3.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$4.50	\$4.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$11.00	\$10.71
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$15.00	\$6.46
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$15.50	\$10.96
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$18.29	\$18.29
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$22.50	\$8.62
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$23.25	\$16.50
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$172.05	\$145.00

<u>Provider</u>	<u>FDOS</u>	<u>TDOS</u>	<u>Billed Am</u>	<u>Paid Amt</u>
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/1/2005	\$306.90	\$192.85
BOUNDARY COMMUNITY HOSPITAL	12/1/2005	12/31/2005	\$4,991.00	\$3,280.03
BOUNDARY COMMUNITY HOSPITAL	12/8/2005	12/8/2005	\$132.00	\$15.08
EVERGREEN PHARMACEUTICAL	1/3/2005	1/3/2005	\$12.62	\$11.36
EVERGREEN PHARMACEUTICAL	1/3/2005	1/3/2005	\$79.00	\$0.00
EVERGREEN PHARMACEUTICAL	1/3/2005	1/3/2005	\$127.00	\$65.39
EVERGREEN PHARMACEUTICAL	2/1/2005	2/1/2005	\$79.00	\$0.00
EVERGREEN PHARMACEUTICAL	2/1/2005	2/1/2005	\$127.00	\$7.94
EVERGREEN PHARMACEUTICAL	2/4/2005	2/4/2005	\$12.62	\$11.36
EVERGREEN PHARMACEUTICAL	6/1/2005	6/1/2005	\$79.00	\$0.00
EVERGREEN PHARMACEUTICAL	8/4/2005	8/4/2005	\$20.00	\$1.67
HOSTETLER, MICHAEL	7/13/2005	7/13/2005	\$68.00	\$0.00
WILLIAMS, MICHAEL	1/12/2005	1/12/2005	\$68.00	\$2.09
WILLIAMS, MICHAEL	4/13/2005	4/13/2005	\$68.00	\$0.00
				\$41,096.78

2006

BOUNDARY COMMUNITY HOSPITAL	1/1/2006	1/1/2006	\$166.50	\$6.46
BOUNDARY COMMUNITY HOSPITAL	1/1/2006	1/31/2006	\$5,270.00	\$3,543.22
BOUNDARY COMMUNITY HOSPITAL	1/16/2006	1/16/2006	\$71.00	\$4.97
BOUNDARY COMMUNITY HOSPITAL	1/31/2006	1/31/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	2/1/2006	2/28/2006	\$4,760.00	\$3,034.75
BOUNDARY COMMUNITY HOSPITAL	2/2/2006	2/2/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	2/16/2006	2/16/2006	\$71.00	\$30.68
BOUNDARY COMMUNITY HOSPITAL	2/16/2006	2/16/2006	\$71.00	\$0.00
BOUNDARY COMMUNITY HOSPITAL	3/1/2006	3/31/2006	\$5,270.00	\$3,543.22
BOUNDARY COMMUNITY HOSPITAL	3/28/2006	3/28/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	4/1/2006	4/30/2006	\$5,100.00	\$3,336.83
BOUNDARY COMMUNITY HOSPITAL	4/7/2006	4/7/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	4/30/2006	4/30/2006	\$71.00	\$8.25
BOUNDARY COMMUNITY HOSPITAL	5/1/2006	5/31/2006	\$5,394.00	\$3,505.09
BOUNDARY COMMUNITY HOSPITAL	5/7/2006	5/7/2006	\$20.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	6/1/2006	6/1/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	6/1/2006	6/30/2006	\$5,220.00	\$3,336.83
BOUNDARY COMMUNITY HOSPITAL	6/29/2006	6/29/2006	\$71.00	\$8.25
BOUNDARY COMMUNITY HOSPITAL	7/1/2006	7/31/2006	\$5,394.00	\$3,683.03
BOUNDARY COMMUNITY HOSPITAL	7/6/2006	7/6/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	8/1/2006	8/1/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	8/1/2006	8/31/2006	\$5,394.00	\$3,683.03
BOUNDARY COMMUNITY HOSPITAL	8/21/2006	8/21/2006	\$8.47	\$0.00
BOUNDARY COMMUNITY HOSPITAL	8/21/2006	8/21/2006	\$35.45	\$0.00
BOUNDARY COMMUNITY HOSPITAL	8/31/2006	8/31/2006	\$71.00	\$9.47
BOUNDARY COMMUNITY HOSPITAL	9/1/2006	9/30/2006	\$5,220.00	\$3,509.03
BOUNDARY COMMUNITY HOSPITAL	9/4/2006	9/4/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	9/25/2006	9/25/2006	\$8.47	\$0.00
BOUNDARY COMMUNITY HOSPITAL	9/25/2006	9/25/2006	\$35.45	\$0.00
BOUNDARY COMMUNITY HOSPITAL	10/1/2006	10/1/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	10/1/2006	10/31/2006	\$5,394.00	\$3,636.62
BOUNDARY COMMUNITY HOSPITAL	10/23/2006	10/23/2006	\$71.00	\$9.47
BOUNDARY COMMUNITY HOSPITAL	10/27/2006	10/27/2006	\$8.47	\$0.00
BOUNDARY COMMUNITY HOSPITAL	10/27/2006	10/27/2006	\$35.45	\$0.00
BOUNDARY COMMUNITY HOSPITAL	11/1/2006	11/1/2006	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	11/1/2006	11/30/2006	\$5,220.00	\$3,462.62
BOUNDARY COMMUNITY HOSPITAL	11/27/2006	11/27/2006	\$8.47	\$0.00
BOUNDARY COMMUNITY HOSPITAL	11/27/2006	11/27/2006	\$35.45	\$0.00
BOUNDARY COMMUNITY HOSPITAL	11/30/2006	11/30/2006	\$51.76	\$0.00
BOUNDARY COMMUNITY HOSPITAL	12/1/2006	12/1/2006	\$10.00	\$5.50

<u>Provider</u>	<u>FDOS</u>	<u>TDOS</u>	<u>Billed Am</u>	<u>Paid Amt</u>
BOUNDARY COMMUNITY HOSPITAL	12/1/2006	12/31/2006	\$5,394.00	\$3,636.62
BOUNDARY COMMUNITY HOSPITAL	12/26/2006	12/26/2006	\$8.47	\$0.00
BOUNDARY COMMUNITY HOSPITAL	12/26/2006	12/26/2006	\$35.45	\$0.00
BOUNDARY COMMUNITY HOSPITAL	12/29/2006	12/29/2006	\$71.00	\$9.47
BOUNDARY COMMUNITY HOSPITAL	12/30/2006	12/30/2006	\$8.47	\$0.00
BOUNDARY COMMUNITY HOSPITAL	12/30/2006	12/30/2006	\$47.20	\$0.00
BOUNDARY COMMUNITY HOSPITAL	12/30/2006	12/30/2006	\$59.28	\$0.00
EVERGREEN PHARMACEUTICAL	3/28/2006	3/28/2006	\$64.80	\$0.00
EVERGREEN PHARMACEUTICAL	3/28/2006	3/28/2006	\$118.32	\$42.78
EVERGREEN PHARMACEUTICAL	5/28/2006	5/28/2006	\$13.78	\$11.36
EVERGREEN PHARMACEUTICAL	5/28/2006	5/28/2006	\$64.80	\$0.00
EVERGREEN PHARMACEUTICAL	5/28/2006	5/28/2006	\$118.32	\$23.96
EVERGREEN PHARMACEUTICAL	6/26/2006	6/26/2006	\$13.78	\$4.80
EVERGREEN PHARMACEUTICAL	6/26/2006	6/26/2006	\$25.30	\$0.00
EVERGREEN PHARMACEUTICAL	7/31/2006	7/31/2006	\$29.58	\$4.93
EVERGREEN PHARMACEUTICAL	10/27/2006	10/27/2006	\$25.30	\$0.00
EVERGREEN PHARMACEUTICAL	10/27/2006	10/27/2006	\$64.80	\$0.00
EVERGREEN PHARMACEUTICAL	10/27/2006	10/27/2006	\$118.32	\$33.02
EVERGREEN PHARMACEUTICAL	11/27/2006	11/27/2006	\$25.30	\$0.00
EVERGREEN PHARMACEUTICAL	11/27/2006	11/27/2006	\$29.58	\$12.83
EVERGREEN PHARMACEUTICAL	11/27/2006	11/27/2006	\$32.40	\$0.00
EVERGREEN PHARMACEUTICAL	12/27/2006	12/27/2006	\$25.30	\$2.50
HEART CLINICS NORTHWEST	1/13/2006	1/13/2006	\$68.00	\$0.85
HEART CLINICS NORTHWEST	4/12/2006	4/12/2006	\$68.00	\$2.59
ORME, ERIC	10/11/2006	10/11/2006	\$68.00	\$0.00

\$42,203.53**2007**

BOUNDARY COMMUNITY HOSPITAL	1/1/2007	1/1/2007	\$10.00	\$5.50
BOUNDARY COMMUNITY HOSPITAL	1/1/2007	1/31/2007	\$5,735.00	\$3,940.62
BOUNDARY COMMUNITY HOSPITAL	1/22/2007	1/22/2007	\$8.47	\$0.00
BOUNDARY COMMUNITY HOSPITAL	1/22/2007	1/22/2007	\$35.45	\$0.00
BOUNDARY COMMUNITY HOSPITAL	1/30/2007	1/30/2007	\$71.00	\$49.61
BOUNDARY COMMUNITY HOSPITAL	2/1/2007	2/1/2007	\$132.00	\$17.40
BOUNDARY COMMUNITY HOSPITAL	2/1/2007	2/28/2007	\$13,720.00	\$3,448.62
BOUNDARY COMMUNITY HOSPITAL	2/21/2007	2/21/2007	\$108.00	\$4.09
BOUNDARY COMMUNITY HOSPITAL	2/22/2007	2/22/2007	\$82.00	\$4.98
BOUNDARY COMMUNITY HOSPITAL	2/23/2007	2/23/2007	\$108.00	\$4.09
BOUNDARY COMMUNITY HOSPITAL	2/26/2007	2/26/2007	\$82.00	\$4.98
BOUNDARY COMMUNITY HOSPITAL	2/28/2007	2/28/2007	\$166.00	\$5.55
BOUNDARY COMMUNITY HOSPITAL	3/1/2007	3/1/2007	\$82.00	\$4.98
BOUNDARY COMMUNITY HOSPITAL	3/2/2007	3/2/2007	\$82.00	\$4.98
BOUNDARY COMMUNITY HOSPITAL	3/3/2007	3/3/2007	\$114.00	\$12.38
EVERGREEN PHARMACEUTICAL	1/27/2007	1/27/2007	\$13.78	\$0.00
EVERGREEN PHARMACEUTICAL	1/27/2007	1/27/2007	\$25.30	\$12.50
EVERGREEN PHARMACEUTICAL	1/27/2007	1/27/2007	\$29.58	\$9.50
EVERGREEN PHARMACEUTICAL	1/27/2007	1/27/2007	\$32.40	\$20.70
EVERGREEN PHARMACEUTICAL	2/26/2007	2/26/2007	\$13.78	\$0.00
EVERGREEN PHARMACEUTICAL	2/26/2007	2/26/2007	\$25.30	\$8.51
EVERGREEN PHARMACEUTICAL	2/26/2007	2/26/2007	\$29.58	\$0.00
EVERGREEN PHARMACEUTICAL	2/26/2007	2/26/2007	\$32.40	\$0.00
HEART CLINICS NORTHWEST	1/10/2007	1/10/2007	\$68.00	\$3.75

\$7,562.74


41

+ Medicare Part B \$167,837.24
 3,549.70
 Total Paid \$171,386.94

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211
I.S.B. #5413

FILED

2007 DEC 13 P 4:18

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY  DEPUTY CLERK

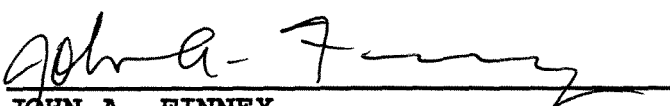
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY
MAGISTRATE DIVISION

In the Matter of the Estate	)	Case No. CV-2007-266
)	
of,	)	NOTICE OF DISALLOWANCE OF
	)	AMENDED CLAIM AGAINST
	)	ESTATE
MELVIN PETERSON,)	
)	
Deceased.)	

TO: State of Idaho, Department of Health and Welfare:

Your amended claim against the Estate, dated December 4, 2007, is disallowed and denied. This disallowance further gives you notice of the impending bar of Idaho Code §15-3-806 unless, as claimant, you take the action set forth in said Idaho Code §15-3-806(a).

DATED this 11th day of December, 2007.


JOHN A. FINNEY
Attorney for CATHIE L. PETERSON,
Personal Representative of the
Estate of MELVIN PETERSON

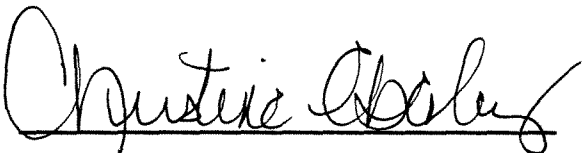
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 17th day of December, 2007, and was addressed to:

Larry L. Goins
Deputy Attorney General
Division of Human Services
P.O. Box 83720
Boise, ID 83720-0036

Cathie L. Peterson
P.O. Box 442
Moyie Springs, ID 83845

By:



LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Human Services Division

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder Street, Suite B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
ISB No. 2295
[goinsl@dhw.idaho.gov]

STATE OF IDAHO
COUNTY OF BOUNDARY
FILED 12/10/07 AT 9:04
GLENDA POSTON, CLERK
BY [Signature]
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

IN THE MATTER OF THE ESTATE OF:)	
)	Case No. CV-2007-266
MELVIN PETERSON,)	
)	PETITION FOR ALLOWANCE
deceased.)	OF CLAIM
)	
)	Fee: exempt (Idaho Code § 31-3212)

COMES NOW the State of Idaho, Department of Health and Welfare (hereinafter "Department"), by and through its attorney, LARRY L. GOINS, Deputy Attorney General, claimant in the above matter, and pursuant to Idaho Code § 15-3-806, petitions the Court as follows:

1. The Department paid medical assistance (Medicaid) benefits on behalf of MELVIN PETERSON (hereinafter "Decedent") in the amount of \$171,386.94;
2. After appointment and pursuant to Idaho Code §§ 15-3-804 and 56-218, a written statement of the Department's claim, in the amount of \$171,386.94, and an Amended Claim Against

Estate was timely mailed to the Personal Representative of the estate and filed with the Court on December 4, 2007;

3. On November 28, 2007, the Department received a Disallowance of Creditor's Claim and Request for Itemization without a stated reason for the disallowance; and

4. The Department's statutory claim is just and valid, and payment should be allowed for the total amount of medical assistance paid on behalf of the Decedent to the fullest extent possible.

WHEREFORE, THE DEPARTMENT REQUESTS that the Court enter an Order allowing the above listed claim to be paid to the fullest extent possible.

DATED this 4/4 day of DECEMBER, 2007.




LARRY L. GOINS
Deputy Attorney General

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITION FOR ALLOWANCE OF CLAIM** was mailed first class, postage prepaid on the 4th day of DECEMBER, 2007, to:

CATHIE PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE ST STE 317
SANDPOINT ID 83864

BOUNDARY COUNTY CLERK
BOUNDARY COUNTY COURTHOUSE
PO BOX 419
BONNERS FERRY ID 83805


Marchelle Premo, Legal Assistant
Division of Human Services

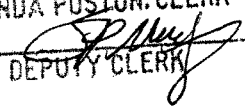
LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief Human Services Division

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder, Ste. B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED

2007 DEC 19 P 1:00

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY  DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE ESTATE OF:

MELVIN PETERSON,

Deceased.

Case No. CV-2007-266

PETITION TO REQUIRE PAYMENT
OF CLAIM

COMES NOW the State of Idaho, Department of Health and Welfare (hereinafter "Department"), by and through its attorney, LARRY L. GOINS, Deputy Attorney General, claimant in the above matter, and pursuant to Idaho Code § 15-3-806, petitions the Court as follows:

1. The Department paid medical assistance (Medicaid) benefits on behalf of MELVIN PETERSON (hereinafter "Decedent") in the amount of \$171,386.94;

2. After appointment and pursuant to Idaho Code §§ 15-3-804 and 56-218, a written statement of the Department's claim, in the amount of \$171,386.94, and an Amended Claim Against Estate was timely mailed to the Personal Representative of the estate and filed with the Court on December 4, 2007;

3. On December 11, 2007, the Department received a Notice of Disallowance of Amended Claim Against Estate without a stated reason for the disallowance; and

4. The Department's statutory claim is just and valid, and payment should be allowed for the total amount of medical assistance paid on behalf of the Decedent to the fullest extent possible.

WHEREFORE, THE DEPARTMENT REQUESTS that the Court enter an Order allowing the above listed claim to be paid to the fullest extent possible.

DATED this 14th day of DECEMBER, 2007.



LARRY L. GOINS
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing **PETITION TO REQUIRE PAYMENT** was mailed first class in the U.S. Mail, postage prepaid, on the 14th day of DECEMBER, 2007, to:

CATHIE L PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE STREET SUITE 317
SANDPOINT ID 83864

BOUNDARY COUNTY CLERK
BOUNDARY COUNTY COURTHOUSE
PO BOX 419
BONNERS FERRY ID 83805



Marchelle Premo, Legal Assistant
Division of Human Services

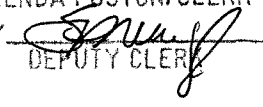
LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Human Services Division

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder Street, Suite B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED

2007 DEC 28 P 1:45

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY  DEPUTY CLERK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

IN THE MATTER OF THE ESTATE OF:)	
)	Case No. CV-2007-266
MELVIN PETERSON,)	
)	PETITION FOR ALLOWANCE
deceased.)	OF AMENDED CLAIM
)	
)	Fee: exempt (Idaho Code § 31-3212)

COMES NOW the State of Idaho, Department of Health and Welfare (hereinafter "Department"), by and through its attorney, LARRY L. GOINS, Deputy Attorney General, claimant in the above matter, and pursuant to Idaho Code § 15-3-806, petitions the Court as follows:

1. The Department paid medical assistance (Medicaid) benefits on behalf of MELVIN PETERSON (hereinafter "Decedent") in the amount of \$171,386.94;
2. After appointment and pursuant to Idaho Code §§ 15-3-804 and 56-218, a written statement of the Department's claim, in the amount of \$171,386.94, and an Amended Claim Against

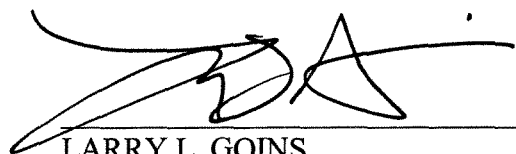
Estate was timely mailed to the Personal Representative of the estate and filed with the Court on December 4, 2007;

3. On December 11, 2007, the Department received a Notice of Disallowance of Amended Claim Against Estate without a stated reason for the disallowance; and

4. The Department's amended claim is just and valid, and payment should be allowed for the total amount of medical assistance paid on behalf of the Decedent to the fullest extent possible.

WHEREFORE, THE DEPARTMENT REQUESTS that the Court enter an Order allowing the above listed claim to be paid to the fullest extent possible.

DATED this 21st day of DECEMBER, 2007.



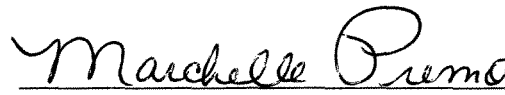
LARRY L. GOINS
Deputy Attorney General

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITION FOR ALLOWANCE OF AMENDED CLAIM** was mailed first class, postage prepaid on the 21st day of DECEMBER, 2007, to:

CATHIE PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE ST STE 317
SANDPOINT ID 83864

BOUNDARY COUNTY CLERK
BOUNDARY COUNTY COURTHOUSE
PO BOX 419
BONNERS FERRY ID 83805



Marchelle Premo, Legal Assistant
Division of Human Services

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

FILED

2008 APR -4 P 1:24

IN THE MATTER OF THE ESTATE OF:

MELVIN PETERSON,

Deceased.

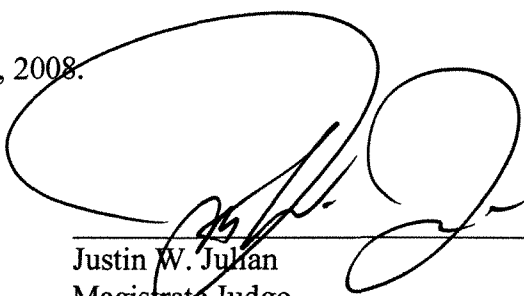
Case No. CV-2007-266 STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
ORDER GRANTING PETITION FOR *Ames*
ALLOWANCE OF AMENDED CLAIM

This matter came before the Court on March 25, 2008, pursuant to the Petition for Allowance of Amended Claim filed by the State of Idaho, Department of Health and Welfare. Larry L. Goins, Deputy Attorney General, appeared in person on behalf of the Claimant while John A. Finney appeared telephonically on behalf of the Personal Representative. Rex A. Finney was also present. The Court heard argument from counsel and being fully advised in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED that the Petition for Allowance of Amended Claim filed by the State of Idaho, Department of Health and Welfare, be and the same is hereby, GRANTED.

IT IS FURTHER HEREBY ORDERED that subject to the availability of estate funds as may be determined at a later time by the Court, the Personal Representative shall allow said claim in the amount of \$171,386.94.

SO ORDERED this 4th day of April, 2008.


Justin W. Julian
Magistrate Judge

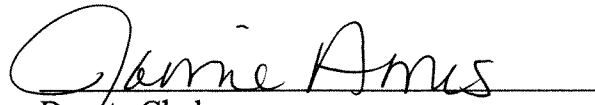
CLERKS CERTIFICATE FOR SERVICE

THE UNDERSIGNED CERTIFIES that a true and correct copy of the foregoing ORDER GRANTING PETITION FOR ALLOWANCE OF AMENDED CLAIM was mailed first class, postage prepaid, in the US Mail, to the following:

LARRY L. GOINS
DEPUTY ATTORNEY GENERAL
PO BOX 83720
BOISE, ID 83720-0036

CATHIE L PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE STREET SUITE 317
SANDPOINT ID 83864

DATED this 5th day of April, 2008.


Deputy Clerk

LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Human Services Division

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder, Ste. B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
Facsimile: (208) 334-6515
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED

2008 MAY -5 A 10: 38

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA ROSTON, CLERK
BY
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate of

MELVIN PETERSON,

Deceased.

Case No. CV-2007-266

**PETITION TO REQUIRE
PAYMENT OF CLAIM**

COMES NOW the Idaho Department of Health and Welfare (Department), by and through its attorney, Larry L. Goins, Deputy Attorney General, and pursuant to Idaho Code § 15-3-807(a) hereby petitions the Court as follows:

1. Melvin Peterson (Decedent) was born [REDACTED] and died at the age of 83 on March 3, 2007.

2. Prior to his death but after reaching the age of 55, Decedent applied for and received state medical assistance (Medicaid) benefits in the amount of \$171,386.94.

3. Pursuant to Idaho Code §§ 15-3-805(a)(5) and 56-218/(1)and (5), the Department has a priority claim against the estate of Decedent for Medicaid benefits paid on his behalf.

4. Pursuant to Order Granting Petition for Allowance of Amended Claim filed on April 4, 2008, the Court ordered the Personal Representative to allow the Department's Amended Claim Against Estate in the amount of \$171,386.94, subject to the availability of estate funds.

5. Since then and despite a request for payment form the estate, the Personal Representative has taken no action and the Department has received no payment on its Amended Claim Against Estate.

6. Assets of the estate include a life estate interest Decedent held in his home located in Moyie Springs, Boundary County, Idaho.

7. Attached hereto as Exhibit A and made a part hereof, is a true and correct copy of a Gift Deed whereby Decedent conveyed his interest in the home to the Personal Representative and reserved a life estate interest unto himself, Instrument No. 204218, December 6, 2001, Boundary County, Idaho.

8. Attached hereto as Exhibit B and made a part hereof, is a true and correct copy of a Tax Master Inquiry from the Boundary County Treasurer which reflects a 2007 market value for the home in the amount of \$107,250.

9. Given the Decedent's age at the time of death, the Life Estate Remainder Table contained in IDAPA § 16.03.05.837 (Mar. 30, 2007) and the applicable factor of .38642, the value of the life estate interest is \$41,444.

10. Other assets of the estate include a one-half interest in a Deed of Trust Note executed in favor of Decedent by Isaac V. Robinson and Carol. J. Robinson, for the principal

amount of \$31,500 and payable in the monthly amount of \$382.18 from August 18, 2003, and to July 18, 2013.

11. Attached hereto as Exhibit C and made a part hereof, is a true and correct copy of the Deed of Trust Note.

12. As of March, 2007, and presuming the debtors were current on the Deed of Trust Note, the principal balance was approximately \$22,499 and the Decedent's one-half interest therein was approximately \$11,250.

13. Pursuant to IDAPA § 16.03.09.900.18a (Mar. 30, 2007), assets in an estate subject to estate recovery claims by the Department, include the outstanding balance of a promissory note or loan at the time of death.

WHEREFORE, the Department prays for the following relief:


1. An order requiring the Personal Representative to promptly pay the Department's Amended Claim Against Estate in an amount of \$52,694, less reasonable costs and expenses of administration;

2. In the alternative, and if the Personal Representative is unable to so pay the Department's Amended Claim Against Estate, an order requiring the prompt sale of Decedent's assets for fair market value, plus an accounting of the Personal Representative's dealings with respect to all assets of the estate; and

3. Such other relief as may be appropriate and proper.

DATED this 5th day of May, 2008.

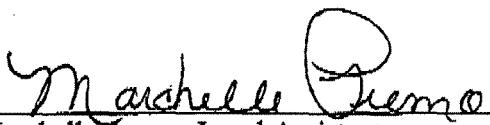
IDAHO DEPARTMENT OF
HEALTH AND WELFARE


LARRY L. GOINS
Deputy Attorney General
Attorney for Department

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PETITION TO REQUIRE PAYMENT** was served via facsimile to (208) 263-8211 and mailed first class via U.S. Mail, postage prepaid, on the 5th day of May, 2008, to:

CATHIE L PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE STREET SUITE 317
SANDPOINT ID 83864


Marchelle Premo, Legal Assistant

c-582

Home

GIFT DEED

204218

IN CONSIDERATION of love and affection, and in addition, in consideration of the aid and assistance grantee has give grantor in the care and maintenance of grantor and the property hereinafter described without thought or request for remuneration of any type or kind whatsoever, MELVIN PETERSON, a single person, grantor, does hereby give, grant, alien, convey and confirm unto CATHIE PETERSON, a single person, grantee, whose address is P.O. Box 442, Moyie Springs, ID 83845, the property described as follows:

Tax #5, being part of Lot Five (5), Block Two (2), Moyie Springs Townsite and described as follows:

Commencing at the Northeast Corner of Lot Five (5), Block Two (2), Moyie Springs Townsite; thence West along the North Line of Lot Five (5), a distance of 40 feet to a point; thence Southwesterly along Moyie Street a distance of 140 feet to a point; thence South 63 feet to a point; thence East 95 feet at a point on the East line of Lot 5; thence North 125 feet to the POINT OF BEGINNING.

RESERVING UNTO GRANTOR A LIFE ESTATE IN SAID PROPERTY.

TO HAVE AND TO HOLD the said premises with the appurtenances unto the grantee, its heirs and assigns forever. And the grantor does hereby covenant to and with the said grantee that it is the owner in fee simple of said premises and that they are free from all encumbrances and that it will WARRANT and DEFEND the same from all lawful claims whatsoever.

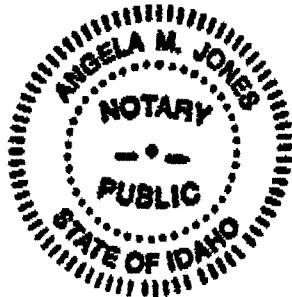
DATED this 5th day of December, 2001.

Melvin Peterson
Melvin Peterson

STATE OF IDAHO)
) ss
County of Boundary)

On this 5 day of December, 2001, before me, the undersigned Notary Public, personally appeared MELVIN PETERSON, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same.

Angela M. Jones
Notary Public for Idaho
Commission Expires: 3-13-2002



STATE OF IDAHO }
County of Boundary } ss

Filed for record at the request of Featherston Law Firm
on Dec 6, 2001 at 4:10pm and recorded in
Book 146 of Instruments on page 25
Diana M. Cartwright
County Recorder Chris Peterson
By Deputy

Fee \$ 3.00 chg
Mail to _____

FLF

MAY 20 2003

Featherston Law Firm

David B. Featherston
Great C. Featherston
Attorneys at Law
P.O. Box 9100
of Council
Sandra J. Wreck
of Council
6426 Spoutant Street
P.O. Box 1820
Burrows Ferry, Idaho 83805
(208) 267-3127

* Licensed in
Idaho & Washington

EXHIBIT

A

58

May. 5. 2008 10:34AM

HEALTH & WELFARE DIV OF MEDICAID

No. 7368 P. 7/25

TAX MASTER INQUIRY - BOUNDARY COUNTY TREASURER

9:52:50
4/16/2008

TX0040

P.O. BOX 218
BONNERS FERRY, ID 83805
208-267-3291

FMPKEY: RP M07400002005A A YEAR 2007

BILL# 2949

TXPKEY: RPM07400002005AA

BILLED TO: PETERSON, MELVIN LE

NAME PETERSON, MELVIN LE
& PETERSON, CATHIE

CODE AREA 2-0000 ACCT TYP
BANK COPY FLB OWNER PUP

ADDRESS PO BOX 442

MARKET VALUE 107,250

HARDSHIP

HOMEOWNER

53,325

MOYIE SPRINGS ID 83845-0442

NET MARKET

53,925

TAX AMOUNT

432.18

LEGAL TAX 5 IN LOT 5

LESS: CIRCUIT

427.40

BLOCK 2

PLUS: SPECIALS

112.96

MOYIE SPRINGS TOWNSITE

NET TAX BILLED

117.74

TAX PAYMENTS

117.74

TAX CANCELLED

SPEC CANCELLED

REMAINING TAX DUE

15

MOYIE

ST 83845

EXHIBIT

3

59

07/24/2003 17:24 2082675515

SHELMAN REALTY

PAGE 02

Order No.: BF8545

DEED OF TRUST NOTE

\$31,500.00

Dated: July 17, 2003

For Value received, the undersigned promise to pay to the order of: **Melvin Peterson**
and **Catherine Lynne Peterson**, joint tenants with right of survivorship the Principal
sum of **Thirty One Thousand Five Hundred and 00/100 Dollars (\$31,500.00)** in lawful
money of the United States of America, with interest thereon at the rate of Eight percent
(8% per annum) from July 18TH, 2003 in installments as follows:

The sum of \$382.18, which includes interest, to be paid on or before August 18,
2003, and a like sum of \$382.18, which includes interest, to be paid on or before
18th of each and every month thereafter, until July 18, 2013, at which time the
entire balance of principal, plus accrued interest thereon, shall be due and
payable.

191.09
21382.18

All payments shall be credited first to interest and the remainder, if any, to principal.

The Makers reserve the option to prepay this obligation at any time without notice or
incurring a penalty for such prepayment or prepayments. All prepayments shall be
applied by the Holder hereof against principal in the inverse order of maturity without
reducing the amount of the remaining obligatory installments as provided herein above,
nor shall any such prepayments have the effect of excusing the next monthly installment
payment due.

In case of failure to pay any installment when same shall become due, the holder at his
option, may declare the whole principal hereof as immediately due and payable. In case
this note is collected by an attorney, either with or without suit the undersigned hereby
agree to pay all costs and a reasonable attorney's fee.

This note is secured by a Deed of Trust of even date executed by the undersigned on
certain real property described therein.

The undersigned hereby waive presentment, protest, and notice.

1/2 of the payment goes to Melvin Peterson
1/2 of the payment goes to Catherine Peterson

Isaac V. Robinson
Isaac V. Robinson

Carol J. Robinson
Carol J. Robinson

THIS IS CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL
Fredrickson
ESCROW OFFICER



600

LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Human Services Division

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder, Ste. B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
Facsimile: (208) 334-6515
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED

2008 MAY -5 A 10:38

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA P. STON, CLERK
BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate of

MELVIN PETERSON,

Deceased.

Case No. CV-2007-266

**BRIEF IN SUPPORT OF
PETITION TO REQUIRE
PAYMENT OF CLAIM**

COMES NOW the Idaho Department of Health and Welfare (Department), by and through its attorney, Larry L. Goins, Deputy Attorney General, and hereby submits this Brief in Support of Petition to Require Payment of Claim as follows:

BACKGROUND

On April 4, 2008, the Court entered its Order Granting Petition for Allowance of Amended Claim filed by the Department in the amount of \$171,386.94. Thereafter, the Department made demand on the Personal Representative for payment, subject to the availability

of estate funds. The Personal Representative has taken no action to satisfy the claim and the Department has received no payment. As a result, the Department filed a Petition to Require Payment of Claim in the amount of \$52,694, less reasonable costs and expenses of administration. In the alternative, the Department requested an order requiring the assets of Melvin Peterson (Decedent) be sold for fair market value and for an accounting from the Personal Representative.

At issue is whether the Decedent's life estate interest in the Moyie Springs home and his one-half interest in a Deed of Trust Note (Note) are assets for estate recovery purposes by the Department. Attached to the Petition to Require Payment of Claim are copies of the Gift Deed whereby Decedent reserved a life estate interest, and Note in which Decedent had a one-half interest along with the Personal Representative.

ARGUMENT

1. The Life Estate Interest Is an Asset Subject to the Department's Estate Recovery Claim.

Pursuant to Idaho Code § 56-218(4), the term "estate" shall include all assets defined by the probate code, and all other assets the medicaid recipient had an interest in at the time of death, including a "life estate" interest. In addition, case law confirms that life estates held prior to death, "must be included in the estate inventory and a value determined and attributed to the life estate real property interest for the limited purpose of satisfying, in part or in whole, the State of Idaho, Department of Health and Welfare's valid and timely filed claim for recovery of Medicaid benefits...." *In re Estate of Grothe*, Nez Perce County No. CV 02-02163, Gaskill, M.J. (Opinion and Order on Petition for Inclusion of Life Estate in Estate Inventory at 9, Aug. 9, 2007)(Copy attached).

Also attached is a copy of the county treasurer's printout which reflects the 2007 assessed value of the home at \$107,250. Decedent died at the age of 83 on March 3, 2007. The value of his life estate interest at the time of death is computed by using the Life Estate Remainder Table contained in IDAPA § 16.03.05.387 (Mar. 30, 2007). The applicable factor for the life estate interest at age 83 is .38462 (1.00000 minus .61358). The assessed value of the home multiplied by this factor equals \$41,444, or the statutory value of the life estate interest for medicaid recovery purposes. Therefore, the life estate interest is an asset subject to the Department's estate recovery claim.

2. Decedent's One-Half Interest in the Note Is Another Asset Subject to the Department's Estate Recovery Claim.

The Note in favor of the Decedent and the Personal Representative jointly was for the principal amount of \$31,500 and payable in the monthly amount of \$382.18 from August 18, 2003, and to July 18, 2013.

Assets in the estate from which the claim can be satisfied must include...
[p]ayments to the participant under an installment contract on any real or personal property to which the deceased participant had a property right. The value of a promissory note, loan, or property agreement is its outstanding principal balance at the date of death of the participant.

IDAPA § 16.03.09.900.18(a)(Mar.30, 2007).

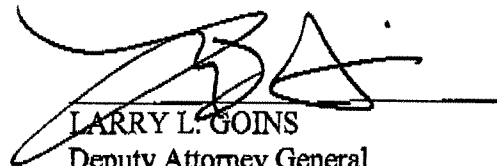
Using the financial calculators at www.yourmoneypage.com, the principal balance of the Note was approximately \$22,499 in March, 2007. One-half of the balance or Decedent's individual interest should be \$11,250. This analysis presumes the debtors were current on the Note. Therefore, Decedent's one-half interest in the Note is another asset subject to the Department's estate recovery claim.

CONCLUSION

For the foregoing reasons, the Department's medicaid recovery claim against the estate is \$52,694, or the combined values of the life estate interest and Note. The Court should grant the Department's Petition to Require Payment of Claim and enter an appropriate order to require payment and sale of home, if necessary.

DATED this 5th day of May, 2008.

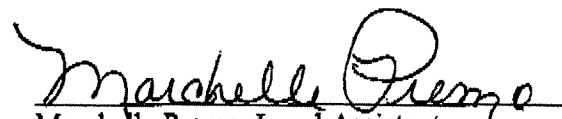
IDAHO DEPARTMENT OF
HEALTH AND WELFARE


LARRY L. GOINS
Deputy Attorney General
Attorney for Department

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **BRIEF IN SUPPORT OF PETITION TO REQUIRE PAYMENT OF CLAIM** was served via facsimile to (208) 263-8211 and mailed first class via U.S. Mail, postage prepaid, on the 5th day of May, 2008, to:

CATHIE L PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE STREET SUITE 317
SANDPOINT ID 83864


Marchelle Premo, Legal Assistant

RECEIVED

AUG 15 2007

OFFICE OF ATTORNEY GENERAL
HUMAN SERVICES DIV.

FILED

2007 AUG -9 P 3:50

PATY D. WEEKS
CLERK OF THE DIST. COURT*Donna Williams*IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCEIN THE MATTER OF THE ESTATE OF)
)
OLIVE J GROTHE and LLOYD GROTH,)
husband and wife,)
)
Deceased.)
_____)

CASE NO. CV02-02163

OPINION AND ORDER ON
PETITION FOR INCLUSION
OF LIFE ESTATE IN
ESTATE INVENTORY

This matter is before the Court on the State of Idaho, Department of Health and Welfare's (hereinafter "Department") Objection to Inventory and Final Account, and Petition to Require Life Estate to be Included in Inventory. The Court heard oral arguments on the matter April 19, 2007. Following arguments, the Court set a status conference in the matter for May 24, 2007. On May 29, 2007, the Court ordered the parties to submit briefing on the inventory issue by June 25, 2007. The Department is represented by attorney W. Corey Cartwright from the State of Idaho Attorney General's office. The Personal Representative of the Estate (hereinafter "Estate") is represented by attorney Eric K. Peterson. The Court, having read the objection and petition, the stipulation of facts and the briefs submitted by the parties, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

STIPULATED FACTS AND PROCEDURAL BACKGROUND

Lloyd Grothe was born on January 16, 1909. On August 1, 2000, Mr. Grothe was granted medical assistance through the Medicaid program. The program expended not less than \$11,197.21 in medical and nursing home care benefits for Mr. Grothe during his eligibility period. Lloyd Grothe died on December 25, 2000, survived by his wife, Olive J. Grothe, who died on September 22, 2001.

On February 19, 2002 a Medicaid lien was filed with the Secretary of State's office against any asset of the Lloyd and Olive Grothe estate. Pursuant to I.C. § 56-218(1) and (5), the Department has a priority estate claim for Medicaid benefits paid on behalf of Lloyd Grothe. On September 20, 2002, the Department filed a Petition for Appointment of Personal Representative in the matter of the estate of Lloyd and Olive Grothe. The Petition asserted the Department held a valid lien against the estate, that no personal representative had been appointed to probate the estate and that the Department sought to assert its claim for Medicaid lien against estate assets, including real property located at 1024 Hamlock in Lewiston, Idaho.

On September 23, 2007 an Order Appointing Public Administrator was entered by the Court. On November 4, 2002, the Department filed a Claim Against Estate in the amount of \$11,197.24 and a Demand for Notice, serving the same on the administrator. The Department's claim was not disallowed and no Notice to Creditors has been published.

On January 13, 2003, attorney Eric Peterson filed a Resignation of Personal Representative and Appointment of Successor Personal Representative in the above-entitled probate action. The decedents' son, Gary Grothe, was appointed successor personal representative by the Court on January 16, 2003.

On July 13, 2006, the Department filed a Petition to Require Payment of Claim. On January 16, 2007, the Medicaid lien against the estate was renewed for five (5) years by the filing of a renewal with the Secretary of State's office.

On April 2, 2007, the personal representative filed a Petition for Order Approving Charge and Discharge statement, Final Accounting, Final Settlement and Distribution and a Charge and Discharge Statement, Final Accounting and Distribution Statement. The filed documents listed the real property at issue as having no value and included the notation "for disclosure purposes only - no value listed on property as the property is not a probate asset- interest before death was a life estate . . . not subject to probate." A hearing on the Petition for final settlement was scheduled for April 19, 2007. However, prior to the hearing date, the Department filed an Objection to Inventory and Final Account and Petition to Require Life Estate to be Included in Inventory. The objection was raised during the April 19, 2007 hearing, resulting in the Court setting the case for scheduling conference on May 24, 2007. During the scheduling conference, the Court ordered the parties to file briefs by July 25, 2007 on the issue of whether the life estate is subject to probate as an asset of the estate.

The following history is relevant to the issue before the Court. On August 16, 1977, Lloyd and Olive Grothe, along with their son Gary Grothe, were the grantees of real property located at 1024 Hemlock in Lewiston, Idaho. The deed provided each of the Grothes a one-third interest in the property.¹ On February 2, 1998, Lloyd and Olive Grothe conveyed their interest in the real property to Gary and Maria Grothe² by a deed of gift, but reserved a life estate in the property.³ On August 11, 2000, Gary Grothe, acting as attorney in fact for Lloyd Grothe,

¹ Exhibit "A" to the Stipulation of Facts filed April 19, 2007

² Gary Grothe is the son of Lloyd and Olive Grothe. Maria Grothe is the wife of Gary Grothe.

³ Exhibit "B" to the Stipulation of Facts filed April 19, 2007.

conveyed Lloyd's life estate interest in the real property to Olive Grothe. Lloyd Grothe died December 25, 2000 and Olive Grothe died September 22, 2001.

ANALYSIS

The parties agree that the Department has a valid claim for recovery of Medicaid benefits paid on behalf of Lloyd Grothe and that the Department timely filed a claim in the probate action.⁴ In dispute is whether the life estate interest held by Olive Grothe is an asset that must be listed in the estate inventory. The Department contends the life estate is an asset that must be included in the estate inventory as I.C. § 56-218(4) allows the Department to look to the life estate for recovery of expended Medicaid benefits. The Estate takes the position that the Department must initiate a separate action outside of the probate proceeding to enforce whatever rights the Department may have in regard to the life estate. At issue are Idaho's probate code and Idaho's public assistance code, in particular I.C. § 15-1-201(15)⁵ and I.C. § 56-218(4). The issue, which appears to be one of first impression in Idaho, requires the Court to determine whether the statutory schemes are in conflict or can be reconciled.

The Estate begins its argument by propounding the common law principal that when the interest held in real property is a life estate, upon the death of the holder of the life estate, title and control passes immediately to the remainderman. Based on that premise, the Estate contends Olive Grothe's life estate extinguished the moment Olive Grothe died and, therefore, there is no property asset subject to probate and/or inclusion in the probate inventory. The common law

⁴ The personal representative states in his brief filed June 25, 2007, pages 3-4: "The State, by virtue of the application of Idaho Code section 56-218, is a secured creditor of the probate estate. A timely creditor's claim was presented by the State and not denied. The State, again pursuant to the provisions of Idaho code section 56-218, holds a secured interest in the extinguished real property interest as against the current owner of the property."

⁵ The definition of 'estate' is currently found at I.C. § 15-1-201(16) but was located at I.C. § 15-1-201(15) in 2002.

principal espoused by the Estate is correct. Nevertheless, the legislature has the power to modify the common law. *Kirkland v. Blaine County Medical Center*, 134 Idaho 464, 4 P.3d 1115 (2000).⁶ "While we recognize that Idaho's informal probate laws encourage prompt and efficient settlement of estates, they do not evince a public policy of encouraging distribution before estate liabilities have been ascertained and paid." *Hintze v. Black*, 125 Idaho 655, 659, 873 P. 909 (Ct.App.1994) [emphasis added].

The Estate, while impliedly conceding the life estate may have value in the context of I.C. § 56-218, contends the life estate interest held by Olive Grothe falls outside the probate code definition of estate, making it a non-probate asset not subject to inclusion in the probate inventory. Idaho's probate code defines 'estate' as follows:

"Estate" means all property of the decedent, including community property of the surviving spouse subject to administration, property of trusts, and property of any other person whose affairs are subject to this code as it exists from time to time during administration.

I.C. § 15-1-201(15).

The Estate concedes Idaho's public assistance law specifically includes a life estate as an estate asset for purposes of recovery of Medicaid benefits, but contends the Department must bring an action outside of the probate proceedings to assert its rights. The relevant public assistance law reads as follows:

For purposes of this section, the term "estate" shall include:

- (a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and
- (b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the

⁶ "Because it is properly within the power of the legislature to establish statutes of limitations, statutes of repose, create new causes of action, and otherwise modify the common law without violating separation of powers principles, it necessarily follows that the legislature also has the power to limit remedies available to plaintiffs without violating the separation of powers doctrine." *Kirkland v. Blaine County Medical Center*, 134 Idaho at 471

deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement

I.C. § 56-218(4).

The question raised in the instant matter requires the Court to engage in statutory interpretation and construction in order to determine whether I.C. § 15-1-201(15) and I.C. § 56-218(4) are in conflict, can be reconciled, or if one statute controls over the other.

Interpretation of a statute begins with an examination of the statute's literal words. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct.App. 2000). If a court must engage in statutory construction, then its duty is to ascertain and give effect to the intent of the legislature. *Beard*, 135 Idaho at 646, 22 P.3d at 121. In so doing, we look to the context of the statutory language in question and the public policy behind the statute. *State v. Cudd*, 137 Idaho 625, 627, 51 P.3d 439, 441 (Ct.App. 2002). When an ambiguous statute is part of a larger statutory scheme, we not only focus upon the language of the ambiguous statute, but also look at other statutes relating to the same subject matter and consider them together in order to discern legislative intent. *State v. Paciorek*, 137 Idaho 629, 632, 51 P.3d 443, 446 (Ct.App. 2002).

State v. Shanks, 139 Idaho 152, 154, 75 P.3d 206 (Ct.App. 2003).

The Court has traditionally used a two-step approach to legislative interpretation. "We interpret statutes according to the plain, express meaning of a provision in question, and we will resort to judicial construction only if the provision is ambiguous, incomplete, absurd, or arguably in conflict with other laws." *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 742, 979 P.2d 605, 615 (1999).

Sandpoint Independent Highway District v. Board of County Commissioners, 138 Idaho 887, 890, 71 P.3d 1034 (2003).

The language in I.C. § 56-218(4) is plain and unambiguous. For purposes of Medicaid benefits recovery, the definition of 'estate' has been expanded by the Idaho legislature to include a life estate interest in real property⁷. Yet, the expanded language has not been added to the definition of estate in the probate code. Nevertheless, Idaho Code § 15-1-201(15) includes

⁷ Added pursuant to 42 U.S.C.A. § 1396p(b)(4)(B)

'catch-all' language that reads, "... and property of any other person whose affairs are subject to this code as it exists from time to time during administration."

In comparing the two statutes, it is evident they relate to the same subject - the composition of the 'estate' of a deceased individual - making the statutes *in pari materia*.

Statutes are *in pari materia* if they relate to the same subject. *Grand Canyon Dorries v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993). Such statutes are construed together to effect legislative intent. *Id.* Where two statutes appear to apply to the same case or subject matter, the specific statute will control over the more general statute. *State v. Barnes*, 133 Idaho 378, 987 P.2d 290 (1999).

Gooding County v. Wybenga, 137 Idaho 201, 204, 46 P.3d 18 (2002)

The probate code specifically states, "This code shall be liberally construed and applied to promote its underlying purposes and policies." I.C. § 15-1-102(a). The Code then provides:

The underlying purposes and policies of this code are:

- (1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;
- (2) to discover and make effective the intent of a decedent in distribution of his property;
- (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;
- (4) to facilitate use and enforcement of certain trusts;
- (5) to make uniform the law among the various jurisdictions.

I.C. § 15-1-102(b); *See also In re Estate of Elliott*, 141 Idaho 177, 181, 108 P.3d 324 (2005).

When I.C. § 15-1-201(15) and I.C. § 56-218(4) are considered together, along with the underlying purposes and policies of the probate code, and the code is liberally construed and applied to promote those purposes and policies, the intent of the legislature becomes clear. By expanding the definition of 'estate' in I.C. § 56-218, it is clear the legislature intended issues regarding recovery of public assistance medical benefits to be addressed in the probate process.⁸

⁸ While the issue before the Court in *In re Estate of Jackman*, 132 Idaho 213, 970 P.2d 6 (1998) was distinguishable from the issue before this Court, the Supreme Court in *Jackman* had no difficulty reconciling 42 U.S.C. § 1396p, now codified at I.C. § 56-218, with Idaho's probate code, and in particular with I.C. § 15-1-201(15).

However, because the expanded definition is applicable only for the limited issue of public assistance recovery, it would have been error to add the same language to the probate code. To do so would have created a general expansion that would have allowed all creditors to look to the expanded assets for recovery. Such was clearly not the intent of the legislature nor was it necessary.

By expanding the assets that can be reached for the limited purpose of recovery of Medicaid benefits, the legislature created a specific statute that controls over the more general probate statute. Such a scheme is consistent with, and falls within the language of, I.C. § 15-1-201(15), as it allows into the probate proceedings "property of any other person whose affairs are subject to this code as it exists from time to time during administration." Questions relative to a life estate and the property interest of a remainderman fall squarely within this language. Those questions, such as determining the value of a particular life estate the moment before death occurred, do not change whether asked within the confines of a probate proceeding or in a separate action and the questions are as amenable to being answered in a probate proceeding as they would be in a separate proceeding.⁹

The purpose of probate proceedings is to provide an effective and efficient process in which to resolve all creditors' claims and asset distribution issues as they relate to a deceased individual. This purpose can only be effectuated when the probate code is liberally construed and applied so that the underlying purposes and policies are attained. That includes addressing those assets the legislature declared to be estate assets for the limited purpose of a claim for

⁹ The Estate in the instant case directs the Court to the language found in I.C. § 56-218(5) that reads, "Any distribution or transfer of the estate prior to satisfying such claim is voidable and may be set aside by an action in the district court." The Estate asserts this language supports its position that the Department must bring a separate action to recover against the life estate interest of Olive Grothe. The Court is not persuaded. When the language is read in context with the entire code section, it is evident the language is directed at the procedural means for challenging the distribution of an asset by the person appointed within the probate proceeding to administer the estate. The language is not directed at a challenge to the proper composition of the estate.

recovery of Medicaid benefits. Contrary to the arguments of the Estate, I.C. § 15-3-709 declares it the duty and responsibility of the personal representative to take control and/or possession of all potential assets of the estate, whether or not title is disputed, so that proper administration of the estate may be accomplished, which includes addressing all claims against the estate along with the distribution of assets.

ORDER

It is hereby the Order of the Court that, pursuant to Idaho Code § 15-1-201(15) and Idaho Code § 56-218(4), the life estate held by Olive Grothe prior to her death must be included in the estate inventory and a value determined and attributed to the life estate real property interest for the limited purpose of satisfying, in part or in whole, the State of Idaho, Department of Health and Welfare's valid and timely filed claim for recovery of Medicaid benefits received by Lloyd Grothe.

Dated this 9th day of August 2007.


JAY P. GASKILL, Magistrate Judge

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that true and correct copies of the foregoing Opinion and Order were mailed by regular first class mail, and deposited in the United States Post Office, hand delivered via court basket or hand delivered via Valley Messenger Service to:

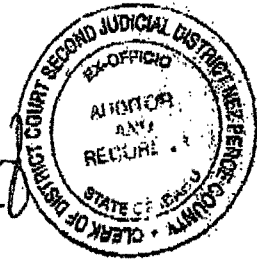
Corey Cartwright
Deputy Attorney General
Human Services Division
P.O. Box 83720
Boise, ID 83720-0036

Eric K. Peterson
CLEMENTS, BROWN AND MCNICHOLS
P.O. Box 1510
Lewiston, ID 83501
United States of America

on this 10th day of August, 2007.

PATTY O. WEEKS
CLERK OF THE COURT

Donna Cunniff
Deputy Clerk



CERTIFICATE OF MAILING

TAX MASTER INQUIRY - BOUNDARY COUNTY TREASURER

9:52:50
4/16/2008

TX0040

P.O. BOX 218
BONNERS FERRY, ID 83805
208-267-3291

PMPKEY: RP M0740002005A A YEAR 2007

BILL# 2949

TXPKY: RPM0740002005AA

BILLED TO: PETERSON, MELVIN LE

NAME PETERSON, MELVIN LE
& PETERSON, CATHIE

CODE AREA 2-0000 ACCT TYP

BANK COPY FLB OWNER PUP

ADDRESS PO BOX 442

MOYIE SPRINGS ID 83845-0442

LEGAL TAX 5 IN LOT 5
BLOCK 2
MOYIE SPRINGS TOWNSITE

MARKET VALUE 107,250

HARDSHIP

HOMEOWNER

53,325

NET MARKET

53,925

TAX AMOUNT

432.18

LESS: CIRCUIT

427.40

PLUS: SPECIALS

112.96

NET TAX BILLED

117.74

TAX PAYMENTS

117.74

TAX CANCELLED

SPEC CANCELLED

REMAINING TAX DUE

15

MOYIE

ST 83845

ORIGINAL

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB NO. 5413

FILED

2008 MAY 28 P 12:02

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY JMS
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate	)	Case No. CV-2007-266
of,)	
	)	PERSONAL REPRESENTATIVE'S
MELVIN PETERSON,	)	INVENTORY
)	
Deceased.)	
)	
)	
)	
)	
)	

COMES NOW CATHIE L. PETERSON, Personal Representative of the
Estate, by and through her attorney, JOHN A. FINNEY, and files
this beginning Inventory of the Estate:

1. The Decedent died March 3, 2007, intestate. CATHIE L.
PETERSON is the Court appointed Personal Representative of the
Estate.
2. The Personal Representative published a Notice to
Creditors on August 16, 2007, August 23, 2007 and August 30, 2007;
and the time to make a creditor's claim has expired.
3. A Notice to Known Creditor to the State of Idaho
Department of Health and Welfare, dated August 6, 2007, was filed
August 8, 2007.
4. A series of claims and amended claims were filed by the

State of Idaho, Department of Health and Welfare for medical assistance benefits, which were allowed by the Court in the sum of \$171,386.94. This claim will be paid in the course of administration, if sufficient funds are available.

5. A "claim" letter dated August 3, 2007 was received from Provincial Financial Group for \$362.88 for an unreimbursed pension payment made to the Decedents account following the date of death. This claim has been approved and will be paid in the course of administration, if sufficient funds are available.

6. Several claim amounts were filed by Boundary Community Hospital. It appears that the amounts due as of date of death were \$1,007.42 for pharmacy and \$1,794.38 for liability. The general nature of the claims have been approved, but final amounts have not been established due to partial payments, write-offs, and medicare reimbursements. Any final balances will be paid in the course of administration, if sufficient funds are available.

7. The Estate may owe State of Idaho and IRS Federal Income taxes for 2007, the amount of which, if any, is yet undetermined.

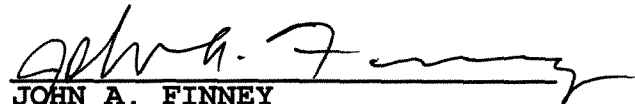
8. The Estate Beginning Inventory as of the date of death March 3, 2007, consisted of the follow:

A.	<u>Real Estate</u>	
	None	0.00
B.	<u>Stocks, Bonds & Certificates of Deposit</u>	
	None	0.00
C.	<u>Mortgages, Notes & Cash</u>	
	(1) Mountain West Bank Acct# ****2078	
	as of 03/30/07	1,288.35
	(2) First American Title Escrow	
	Acct #*****452 (1/2 interest) as	
	of 03/02/07	11,465.48

D.	<u>Other Miscellaneous property</u>	
	Miscellaneous Furniture, & clothes	0.00
E.	<u>Debts/Approved Claims</u>	
	(1) Principal Financial Group	
	RPS No. XXXXX4185	-362.88
	(2) Boundary Community Hospital	
	Pharmacy	-1007.42
	Liability	-1794.38
	(3) State of Idaho, Department of	
	Health & Welfare	-171,386.94
	(3) Taxes - Unknown.	
	SUB-TOTAL	<u>-\$161,797.79</u>

9. The Estate does not have sufficient assets to satisfy all claims.

DATED this 27th day of May, 2008.


 JOHN A. FINNEY
 Attorney for CATHIE L.
 PETERSON, Personal
 Representative of the Estate
 of MELVIN PETERSON

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing PERSONAL REPRESENTATIVE'S INVENTORY was mailed, postage prepaid, this 27th day of May, 2008 and was addressed to:

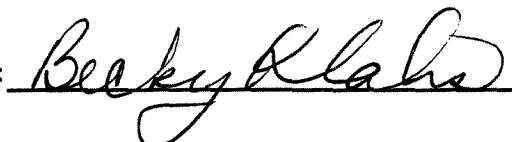
Cathie L. Peterson
 P.O. Box 442
 Moyie Springs, ID 83845

Carl Peterson
 1016 South Whitman # 105
 Tacoma, WA 98465-2002

Larry L. Goins
 Deputy Attorney General
 Division of Human Services
 P.O. Box 83720
 Boise, Idaho 83720-0036

Provincial Financial Group
 Principal Life Insurance
 Company
 Repetitive Payment Services
 P.O. Box 4926
 Grand Island, NE 68802-4926

Boundary Community Hospital
 Attn: Suzi Bishop
 6640 Kaniksu Street
 Bonners Ferry, Idaho 83805

By: 

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

In the Matter of the Estate of

MELVIN PETERSON,

Deceased.

Case No. CV-2007-266

ORDER ON PETITION TO REQUIRE PAYMENT OF CLAIM

THIS MATTER came before the Court pursuant to the Petition to Require Payment of Amended Claim filed by the Idaho Department of Health and Welfare (Department), and the Court having reviewed the Department's supporting Brief, along with the Objection and Inventory filed by the Personal Representative, and having heard oral argument from counsel regarding their respective positions, and being otherwise fully advised in the premises with good cause appearing therefor;

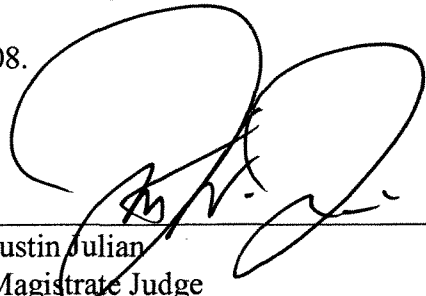
IT IS HEREBY ORDERED that the Petition to Require Payment of Claim filed by the Department, be and the same is hereby, granted to the extent of available assets in the estate, *and the order of priority of the claim, as set forth by statute.*

IT IS FURTHER HEREBY ORDERED that pursuant to Idaho Code § 56-218 (4)(b), the life estate interest decedent held in real property at the time of death, be and the same is hereby, deemed to be any asset of the estate for the limited purpose of medicaid estate recovery by the Department.

IT IS FURTHER HEREBY ORDERED that the Personal Representative of the estate, be and she is hereby, directed to forthwith amend the Personal Representative's Inventory and include the decedent's life estate interest held in real property at the time of death as an asset of the estate.

IT IS FINALLY HEREBY ORDERED that the Personal Representative of the estate, be and she is hereby, directed to further amend the Personal Representative's Inventory and assign an appropriate value to decedent's life estate interest held in real property at the time of death.

SO ORDERED this 12 day of June, 2008.


Justin Julian
Magistrate Judge

CLERK'S CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **ORDER ON PETITION TO REQUIRE PAYMENT OF CLAIM** was mailed first class, postage prepaid on the 12 day of June, 2008 to:

LARRY L. GOINS
DEPUTY ATTORNEY GENERAL
3276 ELDER, STE B
PO BOX 83720
BOISE, ID 83720

CATHIE PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE ST STE 317
SANDPOINT ID 83864



Deputy Clerk

ORIGINAL

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: (208) 263-7712
Fax: (208) 263-8211
ISB NO. 5413

FILED

2008 SEP 23 P 3:21

STATE OF IDAHO
COUNTY OF BOUNDARY
LENDIA POSTON, CLERK

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate	)	Case No. CV-2007-266
of,)	
	)	ORDER APPROVING HIRING OF
MELVIN PETERSON,	)	APPRAISER
)	
Deceased.)	
)	

The Personal Representative's Motion to Hire Appraiser and the Idaho Department of Health and Welfare's Objection to Motion to Hire Appraiser coming before the Court for hearing on September 15, 2008 and upon the personal appearance of counsel for the Personal Representative, John A. Finney, and the telephone appearance of counsel for the Idaho Department of Health and Welfare, Larry Goins, and upon considering the arguments of counsel,

IT IS HEREBY ORDERED that the Personal Representative, as a first priority cost of the administration of the Estate, is approved to hire David Noonan of Appraisal Associates, 120 East Lake Street, Sandpoint, Idaho 83864, (208) 263-6322, to complete a preliminary, tentative, short form appraisal of the fee simple value of the following described real property:

Tax #5, being part of Lot Five (5), Block Two (2),
Moyie Springs Townsite and described as follows:

Commencing at the Northeast Corner of Lot Five (5), Block Two (2), Moyie Springs Townsite; thence West along the North Line of Lot Five (5), a distance of 40 feet to a point; thence Southwesterly along Moyie Street a distance of 140 feet to a point; thence South 63 feet to a point; thence East 95 feet at a point on the East line of Lot 5; thence North 125 feet to the POINT OF BEGINNING.

The costs of said appraisal shall not exceed the sum of FIVE HUNDRED DOLLARS AND 00/100 (\$500.00).

Upon completion of said appraisal, the counsel for the Personal Representative shall provide a copy to counsel for the Idaho Department of Health and Welfare.

The Court reserves ruling on the issue of whether a more detailed, long form appraisal is necessary.

The Court also reserves ruling on the issue as to opinion testimony as to life estate valuation or expectancy, until presented with said issue by affidavit and/or testimony pursuant to I.R.E. 702.

DATED this 23 day of ~~August~~ ^{September} 2008.


JUSTIN JULIAN
MAGISTRATE JUDGE

CERTIFICATE OF CLERK'S RULE 77(d) SERVICE

I hereby certify that a true and correct copy, with the clerk's filing stamp thereon showing the date of filing, of the foregoing, was served by U.S. Mail, postage prepaid, this 23rd day of September, 2008, and was addressed as follows:

John A. Finney
Finney Finney & Finney, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864

Larry L. Goins
Deputy Attorney General
Division of Human Services
P.O. Box 83720
Boise, Idaho 83720-0036

By: 
Deputy Clerk of Court

LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Human Services Division

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder, Ste. B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
Facsimile: (208) 334-6515
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED

2009 JUL 15 P 1:25

STATE OF IDAHO
COUNTY OF BOUNDARY
CLERK
BY Wilson
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate of

MELVIN PETERSON,

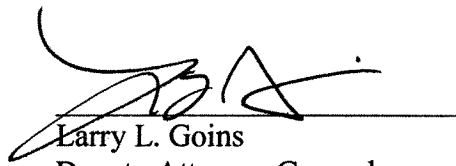
Deceased.

Case No. CV-2007-266

NOTICE OF FILING
APPRAISAL REPORT
AND ADDENDUM

COMES NOW the Idaho Department of Health and Welfare, by and through Larry L. Goins, Deputy Attorney General, and hereby files with the Court true and correct copies of the Appraisal Report and Addendum thereto prepared by David Noonan on October 30, 2008, and June 3, 2009, and marked as Exhibits A and B, respectively. The subject of the Appraisal Report and Addendum is certain real property owned by decedent and located at P.O. Box 442 (Roosevelt), Moyie Springs, Idaho 83845. Pursuant to the Addendum at 2, the "estimated value of the subject property as of 03/03/2007 is \$139,000."

Dated this 10th day of July, 2009.


Larry L. Goins
Deputy Attorney General
Attorney for the Department

CERTIFICATE OF SERVICE

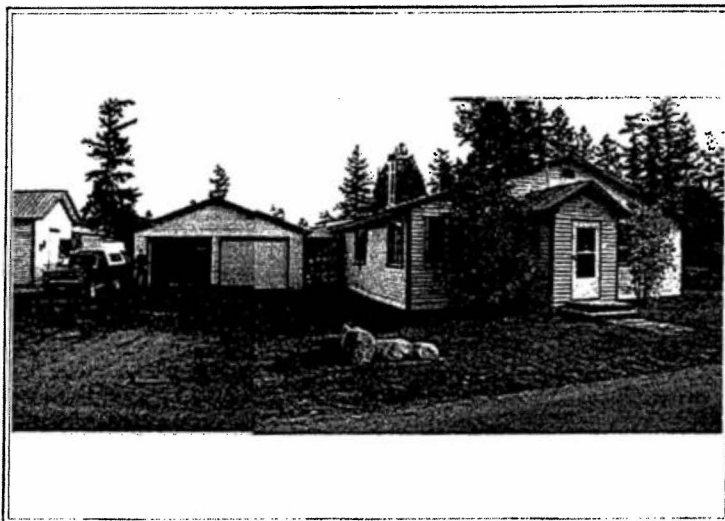
I HEREBY CERTIFY that a true and correct copy of the foregoing via U.S. Mail, postage prepaid, on the 10th day of July, 2009 to:

HONORABLE JUSTIN W. JULIAN
MAGISTRATE JUDGE
BOUNDARY COUNTY, IDAHO
PO BOX 419
BONNERS FERRY ID 83805

CATHIE L PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE STREET SUITE 317
SANDPOINT ID 83864


Julie Raichart
Paralegal

APPRAISAL OF



SINGLE FAMILY RESIDENCE

LOCATED AT:

P.O. BOX 442 (ROOSEVELT)
MOYIE SPRINGS, ID 83845

FOR:

JOHN FINNEY, ATTORNEY AT LAW (FOR THE ESTATE OF M. PETERSON)
120 E. LAKE ST.
SANDPOINT, ID 83864

BORROWER:

ESTATE OF MELVIN PETERSON - % J. FINNEY, ATTORNEY AT LAW

AS OF:

October 30, 2008

BY:

DAVID NOONAN IFA
CGA60

EXHIBIT

tabbies

A

COMPLETE SUMMARY APPRAISAL REPORT

Uniform Residential Appraisal Report

File No. MOYIE SPRINGS 111

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address **P.O. BOX 442 (ROOSEVELT)** City **MOYIE SPRINGS** State ID **83845**
 Borrower **ESTATE OF MELVIN PETERSON - % J. I. Owner of Public Record PETERSON** County **BOUNDARY**
 Legal Description **(SEE ATTACHED ADDENDUM)**

Assessor's Parcel # **M000002005A** Tax Year **N/A** R.E. Taxes \$ **N/A**

Neighborhood Name **BONNERS SUBURBAN** Map Reference **SEE ATTACHED** Census Tract **9701.00**

Occupant ☐ Owner ☐ Tenant ☐ Vacant Special Assessments \$ **N/A** PUD ☐ HOA \$ **N/A** per year ☐ per month

Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe)

Assignment Type ☐ Purchase Transaction ☐ Refinance Transaction ☒ Other (describe) **LEGAL ACTION**

Lender/Client **JOHN FINNEY, ATTORNEY AT LAW** Address **120 E. LAKE ST., SANDPOINT, ID 83864**

Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☐ Yes ☒ No

Report data source(s) used, offering price(s), and date(s). **THE SUBJECT HAS NOT BEEN LISTED FOR SALE IN THE PAST TWELVE MONTHS**

ACCORDING TO THE LOCAL MLS.

I ☐ did ☒ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.

THIS IS NOT A PURCHASE TRANSACTION.

Contract Price \$ **N/A** Date of Contract **N/A** Is the property seller the owner of public record? ☐ Yes ☐ No Data Source(s) **N/A**

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☐ No

If Yes, report the total dollar amount and describe the items to be paid. \$ **N/A** **N/A**

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics

Location ☐ Urban ☒ Suburban ☐ Rural Property Values ☐ Increasing ☒ Stable ☐ Declining PRICE AGE One-Unit 70 %

Built-Up ☐ Over 75% ☒ 25-75% ☐ Under 25% Demand/Supply Shortage ☒ In Balance ☐ Over Supply \$(000) (yrs) 2-4 Unit 0 %

Growth ☐ Rapid ☐ Stable ☒ Slow Marketing Time Under 3 mths ☒ 3-6 mths ☒ Over 6 mths 100 Low NEW Multi-Family 0 %

Neighborhood Boundaries **SEE ATTACHED ADDENDUM.** 800 High 80 Commercial 0 %

250 Pred. 15 Other 30 VAC %

Neighborhood Description **SEE ATTACHED ADDENDUM.**

Market Conditions (including support for the above conclusions) **PLEASE SEE ATTACHED ADDENDUM.**

Dimensions **IRREGULAR** Area **0.299 ACRE+/-** Shape **IRREGULAR** View **NEIGHBORHOOD**

Specific Zoning Classification **COMMERCIAL** Zoning Description **COMMERCIAL**

Zoning Compliance ☐ Legal ☒ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe) **H & B USE IS RESIDENTIAL**

Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe.

Utilities Public Other (describe) Public Other (describe) Off-site Improvements—Type Public Private

Electricity ☒ Gas ☐ Water ☒ Sanitary Sewer ☒ Street **HARD SURFACE** ☒ Alley **NONE/TYPICAL**

FEMA Special Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone **N/A** FEMA Map # **UNKNOWN** FEMA Map Date **NOT MAPPED**

Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe.

Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☒ Yes ☐ No If Yes, describe. **SEE**

ATTACHED ADDENDUM.

80

COMPLETE SUMMARY APPRAISAL REPORT

Uniform Residential Appraisal Report

File No. MOYIE SPRINGS 111

There are 61 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 80,000 to \$ 200,000 .				
There are 36 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 80,000 to \$ 200,000 .				
FEATURE	SUBJECT	COMPARABLE SALE NO. 1	COMPARABLE SALE NO. 2	COMPARABLE SALE NO. 3
P.O. BOX 442 (ROOSEVELT)	146 E. RAILROAD AVE	141 ELECTRIC AVE	ROOSEVELT RD	MOYIE SPRINGS, ID
Address	MOYIE SPRINGS, ID	MOYIE SPRINGS, ID	MOYIE SPRINGS, ID	MOYIE SPRINGS, ID
Proximity to Subject	JUST NORTHEAST	JUST NORTHEAST	1 MILE WEST	
Sale Price	\$ N/A	\$ 125,000	\$ 108,240	\$ 130,000
Sale Price/Gross Liv. Area	\$ 0.00 sq. ft.	\$ 124.01 sq. ft.	\$ 93.15 sq. ft.	\$ 108.70 sq. ft.
Data Source(s)	ASSESSOR	MLS#2083033 DOM-8	MLS#2063242 DOM-619	MLS#2080167 DOM -21
Verification Source(s)	INSPECTION	ASSESSOR	ASSESSOR	ASSESSOR
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION
Sale or Financing	N/A	FHA		CONVENTIONAL
Concessions	N/A	NONE KNOWN		NONE KNOWN
Date of Sale/Time	N/A	08/04/2008-COE		04/16/2008-COE
Location	SUBURBAN	SIMILAR		SIMILAR
Leasehold/Fee Simple	FEE SIMPLE	FEE SIMPLE		FEE SIMPLE
Site	0.299 ACRE +/-	0.36 ACRE +/-		1.47 ACRES +/-
View	NEIGHBORHD.	SIMILAR		SIMILAR
Design (Style)	1 STORY	1 STORY		1 STORY OB
Quality of Construction	AVERAGE	SIMILAR		SIMILAR
Actual Age	21A/20E	16A/10E	-5,000	70A/20E
Condition	AVERAGE	SIMILAR		SIMILAR
Above Grade	Total Bdrms Baths	Total Bdrms Baths		Total Bdrms Baths
Room Count	5 2 2	5 2 1	2,500	5 3 1
Gross Living Area	25.00 1,292 sq. ft.	1,008 sq. ft.	7,100	1,162 sq. ft.
Basement & Finished	NONE	NONE		742 SF BSMT
Rooms Below Grade	NONE	NONE		NO SF FINISH
Functional Utility	AVERAGE	SIMILAR		SIMILAR
Heating/Cooling	F.A. EL/NONE	B.B. EL/NONE	-2,000	MIXED/NO
Energy Efficient Items	AVERAGE	SIMILAR		SIMILAR
Garage/Carport	2 CAR GARAGE	1 CAR CRPT	4,000	1 CAR GARAGE
Porch/Patio/Deck	DECK, ETC.	SIMILAR		INFERIOR
	SITE IMPRO.	SUPERIOR	-2,000	INFERIOR
Net Adjustment (Total)		\$ 4,600	\$ 13,800	\$ 5,800
Adjusted Sale Price of Comparables		Net Adj. 3.7% Gross Adj. 18.1% \$ 129,600	Net Adj. 12.7% Gross Adj. 24.8% \$ 122,040	Net Adj. -4.5 % Gross Adj. 26.6 % \$ 124,200

SALES COMPARISON APPROACH

I ☒ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explainMy research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.Data source(s) **MLS/ASSESSOR**My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.Data source(s) **MULTIPLE LISTING RECORDS**

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE NO. 1	COMPARABLE SALE NO. 2	COMPARABLE SALE NO. 3
Date of Prior Sale/Transfer	NONE	NONE	NONE	NONE
Price of Prior Sale/Transfer	N/A	N/A	N/A	N/A
Data Source(s)	MLS RECORDS/ASSESS	MLS RECORDS	MLS RECORDS	MLS RECORDS
Effective Date of Data Source(s)	11/02/2008	11/02/2008	11/02/2008	11/02/2008

Analysis of prior sale or transfer history of the subject property and comparable sales **NO SALES OR TRANSFERS OF THE SUBJECT FOR THE PAST 36 MONTHS. NO SALES OF THE COMPARABLES IN THE 12 MONTHS PRIOR TO THEIR EFFECTIVE DATE OF SALE.**Summary of Sales Comparison Approach. **SEE ATTACHED ADDENDUM**Indicated Value by Sales Comparison Approach \$ **126,000**Indicated Value by: Sales Comparison Approach \$ **126,000**

Cost Approach (if developed) \$

Income Approach (if developed) \$ **N/A**

RECONCILIATION

This appraisal is made ☒ "as is." ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ **127,500** as of **10/30/2008**, which is the date of inspection and the effective date of this appraisal.

ADDENDUM

Borrower: ESTATE OF MELVIN PETERSON - % J. FINNEY, ATTORNEY AT LAW
Property Address: P.O. BOX 442 (ROOSEVELT)
City: MOYIE SPRINGS
Lender: JOHN FINNEY, ATTORNEY AT LAW

File No.: MOYIE SPRINGS 111
Case No.:
State: ID Zip: 83845

CONDITIONS/COMMENTS

THE INTENDED USER OF THE APPRAISAL REPORT IS THE CLIENT ALONG WITH THE IDAHO DEPARTMENT OF HEALTH AND WELFARE.

THE INTENDED USE IS TO EVALUATE THE PROPERTY THAT IS THE SUBJECT OF THIS APPRAISAL FOR POSSIBLE SETTLEMENT OF A MEDICARE CLAIM. THIS REPORT IS SUBJECT TO THE STATED SCOPE OF WORK, PURPOSE OF THE APPRAISAL, REPORTING REQUIREMENTS OF THE APPRAISAL REPORT FORM, AND DEFINITION OF MARKET VALUE. THE COURT ORDER REQUESTING THE APPRAISAL REPORT IS ATTACHED TO THIS REPORT.

NO ADDITIONAL OR OTHER INTENDED USERS ARE IDENTIFIED BY THE APPRAISER.

NEIGHBORHOOD BOUNDARIES:

THE SUBJECT NEIGHBORHOOD IS CONSIDERED ALL OF BOUNDARY COUNTY. THE COUNTY HAS A TOTAL POPULATION OF APPROXIMATELY 9,871. BONNERS FERRY, THE COUNTY SEAT, HAS A POPULATION OF APPROXIMATELY 2,515. BOUNDARY COUNTY IS IDAHO'S NORTHERNMOST COUNTY, BORDERING BONNER COUNTY TO THE SOUTH, WASHINGTON TO THE WEST, CANADA TO THE NORTH AND MONTANA TO THE EAST. THE MAJOR ROADWAYS ARE U.S. HIGHWAY 95 RUNNING NORTH AND SOUTH AND U.S. HIGHWAY 2 RUNNING EAST AND WEST.

CHARACTERISTICS OF THE AREA INCLUDE THE CABINET AND SELKIRK MOUNTAIN RANGES WITH PEAKS IN EXCESS 7,000 FEET, THE KOOTENAI AND MOYIE RIVERS AND LARGE ACREAGE AGRICULTURAL INTERESTS. SURROUNDING THE CITY LIMITS, SITES RANGE FROM 0.5 ACRE TO 20 ACRES, AND MORE. BONNERS FERRY IS THE COUNTY SEAT AND PROVIDES THE BULK OF EMPLOYMENT, SERVICES, SCHOOLS AND SHOPPING FACILITIES.

NEIGHBORHOOD DESCRIPTION

BONNERS FERRY IS THE LARGEST CITY IN THE COUNTY AND THE PRIMARY EMPLOYMENT CENTER. THE BOUNDARY COUNTY EMPLOYMENT BASE IS SOMEWHAT DIVERSE AND THE MAJORITY OF THE JOBS ARE GENERATED FROM SMALL AND MEDIUM SIZED EMPLOYERS WITH AGRICULTURE, TIMBER, GOVERNMENT AND TOURISM TYPE EMPLOYMENT PROVIDING THE MAJORITY OF THE BASE. THE TIMBER AND AGRICULTURAL INDUSTRIES REMAIN THE LARGEST IN THE AREA.

CONVENIENCE SHOPPING AND GENERAL SHOPPING, JUNIOR AND SENIOR SCHOOLS, AND MEDICAL FACILITIES ARE ALL LOCATED IN BONNERS FERRY. THERE IS LITTLE OR NO PUBLIC TRANSPORTATION SERVING THE SUBJECT AREA, HOWEVER THIS HAS NO NEGATIVE EFFECT.

PROPERTY COMPATIBILITY IS CONSIDERED AVERAGE FOR THE AREA. MAJOR RECREATION INCLUDES THE SELKIRK AND CABINET MOUNTAIN RANGES, KOOTENAI AND MOYIE RIVERS AND A PUBLIC GOLF COURSE. SINGLE FAMILY RESIDENCES ARE LOCATED ON WATERFRONT, SECONDARY WATERFRONT, FOOTHILL AND MOUNTAIN VIEW SITES OF VARYING SIZES, SMALLER SIZE SUBURBAN PROPERTIES AND URBAN PROPERTIES IN SEVERAL SMALL CITIES.

THE SUB-NEIGHBORHOOD IS THE "THREE MILE", MOYIE SPRINGS AREA, SITUATED NORTH AND NORTHEAST OF THE CITY OF BONNERS FERRY APPROXIMATELY 4 MILES. THIS SUB-NEIGHBORHOOD IS DEVELOPED WITH A GENERAL MIXTURE OF HOMES RANGING FROM CUSTOM BUILT TO AVERAGE BUILT DWELLINGS AND MANUFACTURED HOMES. THE SUBJECT IS LOCATED IN THE TOWN SITE OF MOYIE SPRINGS THAT IS THE LOCATION OF A LUMBER MILE AS SHOWN ON THE ATTACHED AERIAL PHOTOS. THERE IS SCHOOL BUS SERVICE TO THE AREA, BUT NO PUBLIC TRANSPORTATION WHICH IS TYPICAL FOR THE AREA. FOR THE MOST PART HOMES IN THE AREA DEMONSTRATE AN AVERAGE DEGREE OF EXTERIOR MAINTENANCE AND UPKEEP. THE MARKET AREA FOR THE SUBJECT WOULD INCLUDE ALL OF BOUNDARY COUNTY.

EMPLOYMENT STABILITY FOR THE AREA IS AVERAGE WITH AN ECONOMY RELIANT ON TIMBER AND TOURISM BASED EMPLOYMENT. THE SUBJECT HAS AVERAGE PROXIMITY TO SCHOOLS, EMPLOYMENT, SHOPPING CENTERS, AND MEDICAL FACILITIES. POLICE AND FIRE PROTECTION ARE CONSIDERED AVERAGE. PROPERTY COMPATIBILITY IS CONSIDERED AVERAGE FOR THE AREA. IT IS TYPICAL IN THIS MARKET FOR PROPERTIES OF DIFFERENT SIZES AND DESIGNS TO BE LOCATED IN THE SAME AREA. LAND IN THE IMMEDIATE NEIGHBORHOOD IS IN A COMBINATION OF USES INCLUDING SINGLE FAMILY RESIDENTIAL, RECREATIONAL, TIMBER REPRODUCTION AND VACANT LAND. THE LOWER END OF THE VALUE RANGE IS REPRESENTED BY THE SECONDARY PROPERTIES AND THE UPPER END BY THE WATERFRONTAGE PROPERTIES.

NEIGHBORHOOD MARKET CONDITIONS

FOR 2004 IN THE BONNERS FERRY AREA FOR SINGLE FAMILY DWELLINGS, THE AVERAGE SALE PRICE WAS \$132,307. AVERAGE DAYS ON MARKET WAS 192. THE SALES PRICE AS A PERCENTAGE OF LIST PRICE WAS 96.9%. THE NUMBER OF SALES FOR THE YEAR TO DATE WAS 186.

FOR 2005 IN THE BONNERS FERRY AREA FOR SINGLE FAMILY DWELLINGS, THE AVERAGE SALE PRICE WAS \$174,770. AVERAGE DAYS ON MARKET WAS 99. THE SALES PRICE AS A PERCENTAGE OF LIST PRICE WAS 97.8%. THE NUMBER OF SALES WAS 222.

FOR 2006 IN THE BONNERS FERRY AREA FOR SINGLE FAMILY DWELLINGS, THE AVERAGE SALE PRICE WAS \$206,949. AVERAGE DAYS ON THE MARKET WAS 86. THE SALES PRICE AS A PERCENTAGE OF LIST PRICE WAS 96.0%. TOTAL NUMBER OF SALES WAS 161.

FOR 2007 IN THE BONNERS FERRY AREA FOR SINGLE FAMILY DWELLINGS, THE AVERAGE SALE PRICE WAS \$222,970. AVERAGE DAYS ON THE MARKET WAS 95. THE SALES PRICE AS A PERCENTAGE OF LIST PRICE WAS 96.5%. TOTAL NUMBER OF SALES WAS 141.

FOR 2008 IN THE FIRST 1/2 OF THE YEAR IN THE BONNERS FERRY AREA FOR SINGLE FAMILY DWELLINGS, THE AVERAGE SALE PRICE WAS \$215,724. AVERAGE DAYS ON MARKET WAS 101. THE SALES PRICE AS A PERCENTAGE OF LIST PRICE WAS 97%. TOTAL NUMBER OF SALES WAS 49.

ADDENDUM

Borrower: ESTATE OF MELVIN PETERSON - % J. FINNEY, ATTORNEY AT LAW		File No.: MOYIE SPRINGS 119
Property Address: P.O. BOX 442 (ROOSEVELT)		Case No.:
City: MOYIE SPRINGS	State: ID	Zip: 83845
Lender: JOHN FINNEY, ATTORNEY AT LAW		

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FOR 2008, THE TREND APPEARS TO BE ONE OF A FLAT MARKET. SALES PRICES REMAIN CLOSE TO THE PREVIOUS YEARS AVERAGE SALES PRICE. TOTAL NUMBER OF SALES APPEARS DOWN SLIGHTLY COMPARED TO THE FIRST 1/2 OF 2007 (45 VS. 67), YET THIS IS NOT UNEXPECTED. THE WINTER OF 2007-2008 WAS THE MOST SEVERE ON RECORD FOR THE AREA. SNOW FALL TOTALS WERE IN EXCESS OF 12 FEET (TYPICAL 5-6 FEET). THE FIRST QUARTER OF THE CALENDAR IS ALWAYS THE SLOWEST, AND THIS YEAR WAS EXCEPTIONALLY BAD, SO IT IS NO SURPRISE THAT SALES VOLUME IS LESS THAN THE PREVIOUS YEAR.

BASED ON TREND ANALYSIS AND NEIGHBORHOOD INFORMATION AND WITH SUPPORT FROM THE COMPARABLES' DAYS ON MARKET, THE SUBJECT IS ESTIMATED TO SELL AT THE APPRAISED VALUE IN A TIME PERIOD OF APPROXIMATELY 3 TO 9 MONTHS WITH APPROPRIATE MARKETING TECHNIQUES. THESE TECHNIQUES INCLUDE PROPER EXPOSURE WITH AN ASKING PRICE AT APPROXIMATELY MARKET VALUE. MANY ITEMS CAN DRASTICALLY AFFECT MARKETING TIMES INCLUDING ECONOMIC CONDITIONS, PROPERTY CONDITION, ASKING PRICE, ACCESS, ETC.

SITE COMMENTS

THE SUBJECT DWELLING IS LOCATED ON A LEVEL, TOTALLY USABLE PARCEL THAT IS WITHIN THE MOYIE SPRINGS TOWNSITE. DOMESTIC WATER AND SEWAGE DISPOSAL IS VIA CENTRAL SERVICES. MOST UTILITIES ARE AVAILABLE AT THE SUBJECT SITE INCLUDING ELECTRICITY, PHONE AND PUBLIC WATER. THESE TYPES OF SYSTEMS ARE VERY TYPICAL OF THE MARKETPLACE AND DO NOT HAVE A NEGATIVE IMPACT MARKETABILITY OR VALUE.

THE SITE IS VERY TYPICAL OF OTHER SITES IN THE AREA AND WOULD BE WELL ACCEPTED IN THE MARKET PLACE. THE LOCATION PLACES IT SUBJECT TO THE NOISE FROM THE LUMBER MILL.

ADDITIONAL FEATURES

THE DWELLING IMPROVEMENTS INCLUDE AVERAGE QUALITY MATERIALS AND WORKMANSHIP AND ASSOCIATED SITE IMPROVEMENTS PLACING IT FIRMLY WITH THE "AVERAGE" CLASS OF CONSTRUCTION. ITEMS INCLUDE DECKING, GARAGE, WALKWAYS, ETC. THE SUBJECT DOES HAVE SOME DEFERRED MAINTENANCE ITEMS AND THOSE ITEMS HAVE BEEN CONSIDERED UNDER THE "EFFECTIVE AGE" SECTION OF THE ADJUSTMENT GRID.

COMMENTS ON SALES COMPARISON

THE COMPARABLE PROPERTIES PRESENTED ARE THE MOST COMPARABLE, RELEVANT SUBSTITUTE PROPERTIES FOUND IN MY INVESTIGATION. PRIMARY SEARCH PARAMETER WAS FOR SIMILAR LOWER/MIDDLE PRICE RANGE PROPERTIES ON SMALL ACREAGE AND/OR SITES AND LOCATED IN OR NEAR MOYIE SPRINGS THAT HAVE SOLD RECENTLY.

THESE ARE THE MOST SIMILAR COMPARABLES FOUND IN MY INVESTIGATION. ALL THE SALES FELL WITHIN INDUSTRY GUIDELINES REGARDING MINIMAL NET AND GROSS ADJUSTMENTS IN THE ADJUSTMENT GRID. THE SALES UTILIZED ARE THE BEST AVAILABLE.

ALL COMPARABLE SALES ARE WITHIN THE PAST 6 MONTHS. EVERY ATTEMPT WAS MADE TO FIND THE MOST RELEVANT RECENT SUBSTITUTE PROPERTIES THROUGH THE COVERING OF THE BONNER/BOUNDARY COUNTY MULTIPLE LISTING SERVICE, THE BONNER/BOUNDARY COUNTY ASSESSOR'S OFFICE DATA AND FILES AND LOCAL BROKERS.

LARGER ADJUSTMENTS FOR FACTORS THAT INFLUENCE VALUE ARE UNAVOIDABLE AND VERY TYPICAL IN THE APPRAISAL OF CUSTOM TYPE DWELLINGS IN BOUNDARY COUNTY. THESE LARGER ADJUSTMENTS ARE GENERALLY DUE TO THE DIFFERENCE IN VALUE OF THE SITES, QUALITY DIFFERENCES AND SIZES OF DWELLINGS. SITE VALUES ARE INFLUENCED BY QUALITY OF LOCATION, SITE SIZE, ACCESS, VIEWS, TOPOGRAPHY, SOLAR EXPOSURE, VIEW, ETC. THESE FACTORS CONTRIBUTE TO THE OVERALL VALUE OF THE SITE, AND THEY ALSO EXPLAIN THE OCCASIONAL LACK OF CONSISTENCY AT TIMES WHEN COMPARING SITES OF A SIMILAR SIZE OR IN SOME CASES OF A DIFFERING SIZE. OVERALL SITE VALUE INCLUDING SITE SIZE, VIEW AMENITY, PROXIMITY, LOCATION, PRIVACY, TRAFFIC, ETC. IS TAKEN AS A ONE LINE ADJUSTMENT IN THE GRID UNDER "SITE".

ADJUSTMENTS WERE BASED ON MY INTERIOR AND/OR EXTERIOR INSPECTIONS OF THE COMPARABLE PROPERTIES AND ON THE DATA SOURCES INDICATED. ADJUSTMENTS IN THE GRID FOR "QUALITY", "SIZE", "DESIGN" "SITE IMPROVEMENTS", "ETC.", HAVE BEEN MADE ON EACH COMPARABLE PROPERTY BASED ON THE QUALITY, SIZE AND OVERALL CONTRIBUTION, ETC., WHEN COMPARED TO THE SUBJECT PROPERTY. SOME ARE INFERIOR OR SUPERIOR TO THE SUBJECT PROPERTY IN A LESSER DEGREE THAN OTHERS. THESE FACTORS HAVE RESULTED IN THE ABOVE ADJUSTMENTS.

ALL COMPARABLE SALES CONTRIBUTED RELEVANT ELEMENTS OF COMPARISON WHEN CONSIDERING THE ESTIMATED VALUE IN THE FINAL RECONCILIATION, THEREFORE THEY WERE GIVEN SIMILAR WEIGHT IN THE DECISION PROCESS.

CONDITIONS OF THE REPORT

EASEMENTS, RESTRICTIONS AND RESERVATIONS: ONLY EASEMENTS, RESTRICTIONS, ETC. OBSERVED DURING THE PHYSICAL INSPECTION AND/OR POINTED OUT BY THE OWNER/TENANT, ETC. DURING THE PHYSICAL

ADDENDUM

Borrower: ESTATE OF MELVIN PETERSON - % J. FINNEY, ATTORNEY AT LAW		File No.: MOYIE SPRINGS 111
Property Address: P.O. BOX 442 (ROOSEVELT)		Case No.:
City: MOYIE SPRINGS	State: ID	Zip: 83845
Lender: JOHN FINNEY, ATTORNEY AT LAW		

WAS TAKEN EARLY OR LATE IN THE DAY.

PERSONAL PROPERTY: PERSONAL PROPERTY IS IDENTIFIED AS PORTABLE AND TANGIBLE OBJECTS AND WHICH ARE CONSIDERED BY THE GENERAL PUBLIC AS BEING PERSONAL, EG., FURNISHINGS, MACHINERY AND EQUIPMENT, ETC., AS DEFINED BY USPAP. WOOD AND PELLET STOVES ARE CONSIDERED REAL PROPERTY. NO PERSONAL PROPERTY HAS BEEN INCLUDED OR VALUED IN THIS REPORT.

ASSUMPTIONS: THE APPRAISER ASSUMES THE BORROWER, IF ANY, IS AWARE THAT: 1) THIS APPRAISAL DOES NOT SERVE AS A WARRANTY ON THE CONDITION OF THE SUBJECT PROPERTY; 2) IT IS THE RESPONSIBILITY OF THE BORROWER AND/OR OWNER TO EXAMINE THE PROPERTY CAREFULLY AND TO TAKE ALL PRECAUTIONS PRIOR TO ENTERING INTO ANY AGREEMENTS; 3) IT IS ASSUMED THAT THERE ARE NO HIDDEN OR UNAPPARENT STRUCTURAL CONDITIONS OF THE PROPERTY THAT WOULD RENDER IT MORE OR LESS VALUABLE; THE APPRAISER IS NOT QUALIFIED TO MAKE DETERMINATIONS REGARDING THE STRUCTURAL INTEGRITY OF THE DWELLING; 4) IT IS ASSUMED THAT THE DATA SOURCES LISTED PROVIDED ACCURATE AND RELIABLE INFORMATION.

CERTIFICATION: I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF: 1) THE STATEMENTS OF FACT CONTAINED IN THIS REPORT ARE TRUE AND CORRECT; 2) THE REPORTED ANALYSES, OPINIONS AND CONCLUSIONS ARE LIMITED ONLY BY THE REPORTED ASSUMPTIONS AND LIMITING CONDITIONS, AND ARE MY PERSONAL, UNBIASED PROFESSIONAL ANALYSES, OPINIONS AND CONCLUSIONS; 3) I HAVE NO PRESENT OR PROSPECTIVE INTEREST IN THE PROPERTY THAT IS THE SUBJECT OF THIS REPORT AND I HAVE NO PERSONAL INTEREST OR BIAS WITH RESPECT TO THE PARTIES INVOLVED; 4) MY COMPENSATION IS NOT CONTINGENT ON ANY ACTION OR EVENT RESULTING FROM THE ANALYSES, OPINIONS OR CONCLUSIONS IN, OR THE USE OF, THIS REPORT; 5) MY ANALYSES, OPINIONS AND CONCLUSIONS WERE DEVELOPED, AND THIS REPORT HAS BEEN PREPARED, IN CONFORMITY WITH THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE; 6) DAVID NOONAN IFA/CGA#60 HAS MADE A PERSONAL INSPECTION OF THE PROPERTY THAT IS THE SUBJECT OF THIS REPORT

COMPETENCY: BY ACCEPTANCE OF THIS ASSIGNMENT, THE APPRAISER WHO SIGNED THE REPORT CERTIFY HE POSSESSES SUFFICIENT EDUCATIONAL AND TECHNICAL SKILLS REQUIRED TO COMPLETE THIS APPRAISAL IN A PROFESSIONAL MANNER.

90

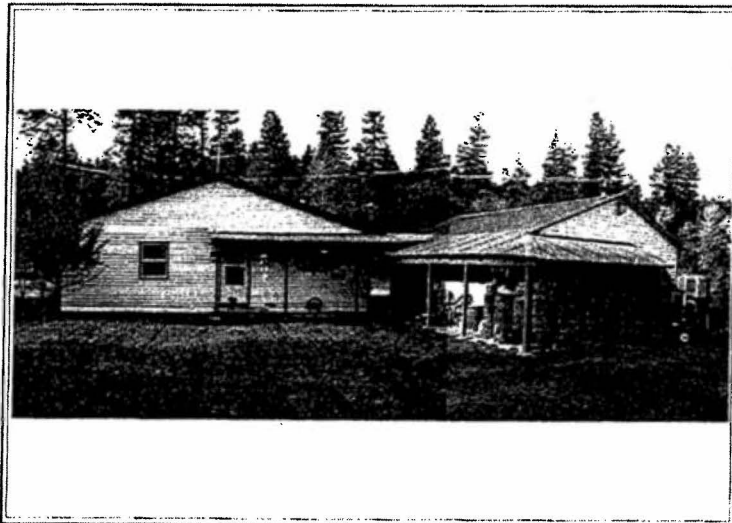
SUBJECT PROPERTY PHOTO ADDENDUM

Borrower: ESTATE OF MELVIN F. PERSON - % J. FINNEY, ATTORNEY AT LAW	File No.: MOYIE SPRINGS 111
Property Address: P.O. BOX 442 (ROOSEVELT)	Case No.:
City: MOYIE SPRINGS	State: ID
Lender: JOHN FINNEY, ATTORNEY AT LAW	Zip: 83845



**FRONT VIEW OF
SUBJECT PROPERTY**

Appraised Date: **October 30, 2008**
Appraised Value: **\$ 127,500**



**REAR VIEW OF
SUBJECT PROPERTY**



STREET SCENE

APPRAISAL ASSOCIATES

SUBJECT PROPERTY PHOTO ADDENDUM

Borrower: ESTATE OF MELVIN P. PERSON - % J. FINNEY, ATTORNEY AT LAW	File No.: MOYIE SPRINGS 111
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LIVING ROOM



KITCHEN

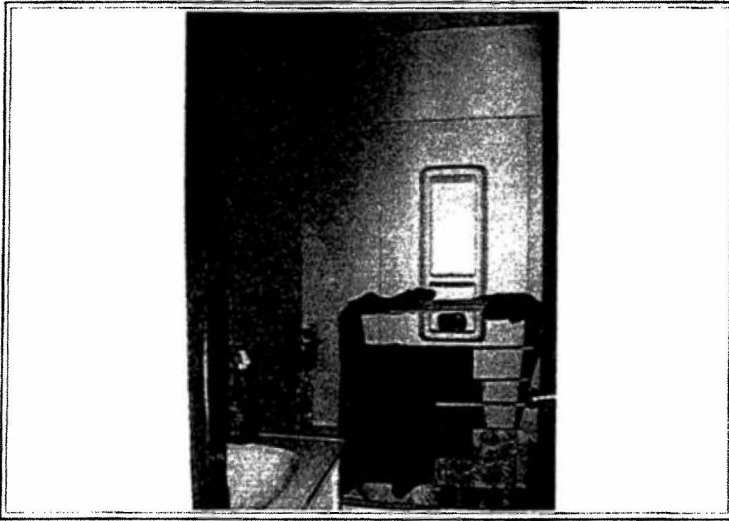


BEDROOM

APPRAISAL ASSOCIATES

SUBJECT PROPERTY PHOTO ADDENDUM

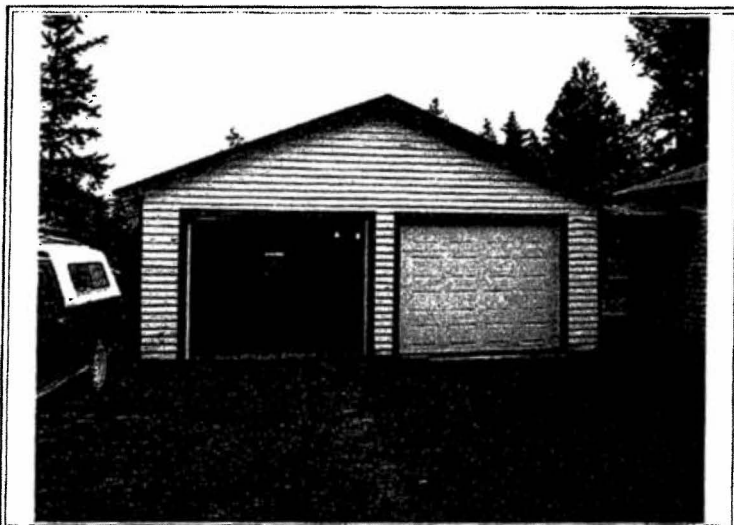
Borrower: ESTATE OF MELVIN P. PERSON - % J. FINNEY, ATTORNEY AT LAW	File No.: MOYIE SPRINGS 111
Property Address: P.O. BOX 442 (ROOSEVELT)	Case No.:
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Lender: JOHN FINNEY, ATTORNEY AT LAW	



BATH



BEDROOM



GARAGE

APPRAISAL ASSOCIATES

SUBJECT PROPERTY PHOTO ADDENDUM

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Lender: JOHN FINNEY, ATTORNEY AT LAW	



FRONT



PEELING PAINT



**PEELING PAINT - GENERAL
DEFERRED MAINTENANCE**

APPRAISAL ASSOCIATES
2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025

Borrower: **ESTATE OF MELVIN PETERSON - % J. FINNEY, ATTORNEY AT LAW**

File No.: **MOYIE SPRINGS 111**

Property Address: **P.O. BOX 442 (ROOSEVELT)**

Case No.:

City: **MOYIE SPRINGS**

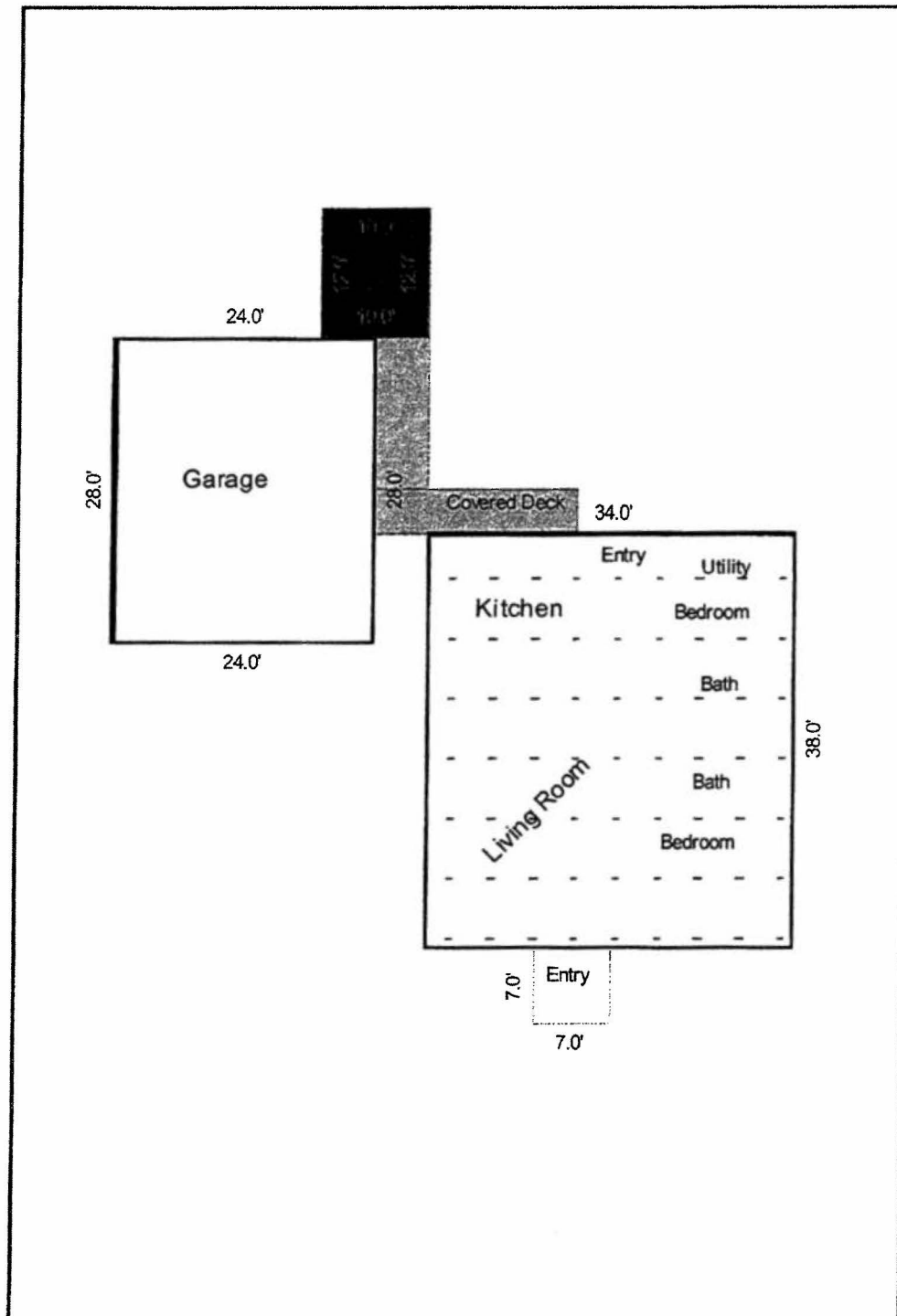
State: **ID**

Zip: **83845**

Lender: **JOHN FINNEY, ATTORNEY AT LAW**

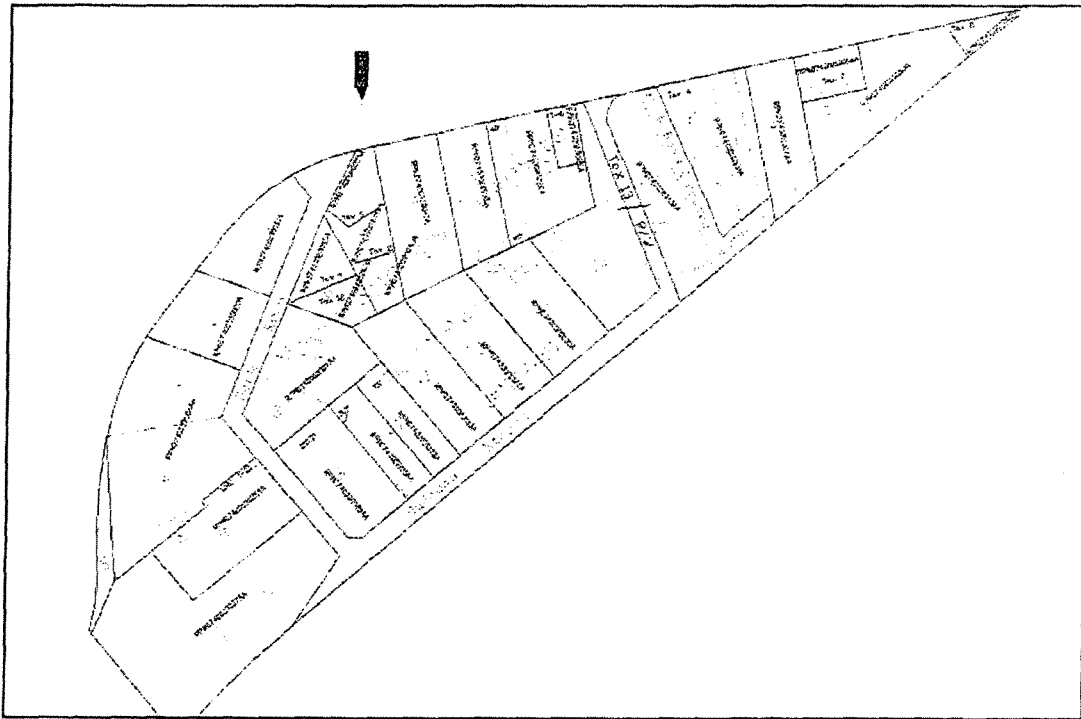


SUBJECT SKETCH



PLAT MAP

Borrower: ESTATE OF MELVIN PETERSON - % J. FINNEY, ATTORNEY AT LAW		File No.: MOYIE SPRINGS 111
Property Address: P.O. BOX 442 (ROOSEVELT)		Case No.:
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APPRAISAL ASSOCIATES

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: ESTATE OF MELVIN PETERSON - % J. FINNEY, ATTORNEY AT LAW	File No.: MOYIE SPRINGS 111
Property Address: P.O. BOX 442 (ROOSEVELT)	Case No.:
City: MOYIE SPRINGS	State: ID Zip: 83845
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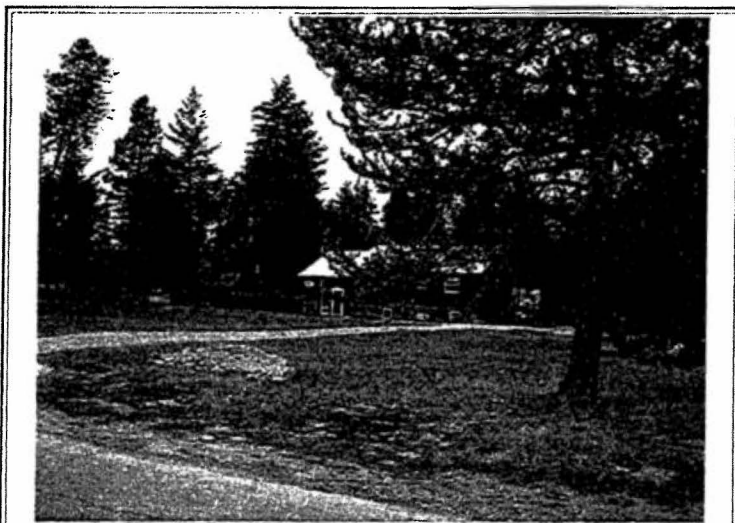
COMPARABLE SALE #1

146 E. RAILROAD AVE
MOYIE SPRINGS, ID
Sale Date: 08/04/2008-COE
Sale Price: \$ 125,000



COMPARABLE SALE #2

141 ELECTRIC AVE
MOYIE SPRINGS, ID
Sale Date: 04/16/2008-COE
Sale Price: \$ 108,240



COMPARABLE SALE #3

ROOSEVELT RD
MOYIE SPRINGS, ID
Sale Date: 04/01/2008-COE
Sale Price: \$ 130,000

APPRAISAL ASSOCIATES

COMPLETE SUMMARY APPRAISAL REPORT
Uniform Residential Appraisal Report

File No. MOYIE SPRINGS 11

ADDITIONAL COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value)

THE COST APPROACH DOES NOT MEASURE THE INTERACTIONS OF BUYER AND SELLERS AND FOR THAT REASON HAS NOT BEEN INCLUDED.

COST APPROACH

ESTIMATED	<input type="checkbox"/> REPRODUCTION OR	<input checked="" type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$
Source of cost data	MARSHALL AND SWIFT AND LOCAL BUILDERS		Dwelling	Sq. Ft. @ \$ = \$
Quality rating from cost service	AVG		Effective date of cost data	CURRENT
Comments on Cost Approach (gross living area calculations, depreciation, etc.)			Sq. Ft. @ \$ = \$	
			Garage/Carport	Sq. Ft. @ \$ = \$
			Total Estimate of Cost-New	= \$
			Less	Physical Functional External = \$ (
			Depreciation	= \$ (
			Depreciated Cost of Improvements	= \$
			"As-is" Value of Site Improvements	= \$
Estimated Remaining Economic Life (HUD and VA only)			43 Years	INDICATED VALUE BY COST APPROACH = \$

INCOME APPROACH TO VALUE (not required by Fannie Mae)

INCOME

Estimated Monthly Market Rent \$	X Gross Rent Multiplier	= \$	N/A	Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)				

PROJECT INFORMATION FOR PUDs (if applicable)

PUD INFORMATION

Is the developer/builder in control of the Homeowners' Association (HOA)?		<input type="checkbox"/> Yes <input type="checkbox"/> No	Unit type(s)	<input type="checkbox"/> Detached <input type="checkbox"/> Attached
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.				
Legal name of project				
Total number of phases	Total number of units		Total number of units sold	
Total number of units rented	Total number of units for sale		Data source(s)	
Was the project created by the conversion of an existing building(s) into a PUD? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, date of conversion.				
Does the project contain any multi-dwelling units? <input type="checkbox"/> Yes <input type="checkbox"/> No Data source(s)				
Are the units, common elements, and recreation facilities complete? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe the status of completion.				
Are the common elements leased to or by the Homeowners' Association? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, describe the rental terms and options.				
Describe common elements and recreational facilities.				

Uniform Residential Appraisal Report

File No. MOYIE SPRINGS 11

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

1000

Uniform Residential Appraisal Report

File No. **MOYIE SPRINGS 11**

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

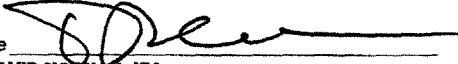
24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature 
 Name **DAVID NOONAN IFA**
 Company Name **APPRAISAL ASSOCIATES**
 Company Address **120 EAST LAKE STREET, #319**
SANDPOINT, ID 83864
 Telephone Number **208-263-6322**
 Email Address **DNOO@SANDPOINT.NET**
 Date of Signature and Report **10/31/2008**
 Effective Date of Appraisal **10/30/2008**
 State Certification # **CGA 60**
 or State License # _____
 or Other (describe) _____ State # _____
 State ID _____
 Expiration Date of Certification or License **07/19/2009**

ADDRESS OF PROPERTY APPRAISED

P.O. BOX 442 (ROOSEVELT)
MOYIE SPRINGS, ID 83845

APPRAISED VALUE OF SUBJECT PROPERTY \$ **127,500**

LENDER/CLIENT

Name _____
 Company Name **JOHN FINNEY, ATTORNEY AT LAW**
 Company Address **120 E. LAKE ST.**
SANDPOINT, ID 83864
 Email Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
 Name _____
 Company Name _____
 Company Address _____
 Telephone Number _____
 Email Address _____
 Date of Signature _____
 State Certification # _____
 or State License # _____
 State _____
 Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
 Date of Inspection _____
☐ Did inspect interior and exterior of subject property
 Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
 Date of Inspection _____

APPRAISAL ASSOCIATES

120 E. LAKE STREET, SUITE 319 • SANDPOINT IDAHO 83864 • (208) 263-6322 • FAX (208) 265-4484

DAVID NOONAN IFA - QUALIFICATIONS
STATE OF IDAHO CERTIFIED GENERAL APPRAISER CGA #60

OWNER: APPRAISAL ASSOCIATES/120 E. LAKE STREET, SUITE #319
SANDPOINT, IDAHO 83864
PHONE: (208) 263-6322 FAX: (208) 265-4484*

ORGANIZATIONS:

Designated Member National Association of Independent Fee Appraisers
Past State Director/National Association of Independent Fee Appraisers
President/ Sandpoint Chapter, N.A.I.F.A. 1985-96
Member of National Association of Realtors
Member Selkirk Association of Realtors
Member MLS Systems Covering Bonner, Boundary and Kootenai Counties

EDUCATION:

Graduated Chaminade College Prep High School/1965-1969
Graduated University of Northern Colorado with B.S. degree in
Business Finance and Economics/1969-1973
Completed Educational Requirements and Courses given by The National
Association of Independent Fee Appraisers
Completed and passed Educational Requirements given by the State
of Idaho for Real Estate Brokers Licensing/1981
Certified through 2001 in the Mandatory Program of Continuing Education
in the National Association of Independent Fee Appraisers

On more than One Occasion Appointed "Special Master" Under Provision 706
Acting as an Expert Witness "For the District Court".

MOST RECENT APPRAISAL CLASSES:

"National USPAP Update Equivalent"
Coeur d'Alene, ID/July, 2008
"Real Estate Investing & Development – A Valuation Persp."
Las Vegas, NV/July 2007
"Rates and Ratios: Making Sense of GIMs, OARs, and DCFs"
Las Vegas, NV/July 2007
"Real Estate Investing & Development – A Valuation Persp."
Las Vegas, NV/July 2007
"Rates and Ratios: Making Sense of GIMs, OARs, and DCFs"
Las Vegas, NV/July 2007
"The Real Estate Economy: What's in Store for 2008?"
Las Vegas, NV/July 2007
"Fannie Mae Revisions and the Appraiser"
Spokane, WA/August, 2005
"Appraisal Trends"
Spokane, WA/August, 2005
National USPAP Update Equivalent"
Boise, ID/July, 2005
"Appraising Multi-Family Properties"
Boise, ID/July, 2005
"National USPAP Update Equivalent"
Boise, ID/July, 2005
"Rates & Ratios: Making Sense of GIMs, OARs & DCF"
Boise, ID/Sept. 2003
"Market Data Abstraction"
Boise, ID/Sept. 2003
"The Effects of Wetlands & Other Factors on Rural Land Value"
Las Vegas, NV/July 2000 (Valuation 2000)
"The Fannie Mae REO Appraisal Workshop"
Las Vegas, NV/July 2000 (Valuation 2000)
"Conservation Easements Seminar"
Las Vegas, NV/July 2000 (Valuation 2000)
"Appraisal Technology Forum"
Las Vegas, NV/July 2000 (Valuation 2000)
"Uniform Standards of Professional Appraisal Practice"
St. Louis, MO/June 1999 (NAIFA)

"Thirty Specialized Appraisal Issues"
 Spokane, Washington/April 1998 (Appraisal Institute)
"Income Capitalization Techniques"
 Boise, Idaho/April 1998 (McKissock Systems)
"Review Appraising"
 Boise, Idaho/April 1998 (McKissock Systems)
"Environmental Considerations"
 Boise, Idaho/April 1998 (McKissock Systems)
"Rural Business Valuation"
 Jackpot, Nevada/May 1998 (Farm Managers & Rural Appraisers)
"Market Data Analysis of Residential Real Estate"
 Helena, Montana/September 1991 (NAIFA/Challenge)
"Report Writing of Residential Real Estate"
 Helena, Montana/September 1991 (NAIFA/Challenge)
"Real Estate Construction & Development"
 Helena, Montana/September 1991 (NAIFA)
"Techniques of Income Property Appraising"
 Helena, Montana/December 1990 (NAIFA)
"Uniform Standards of Professional Appraisal Practice"
 Spokane, Washington/July 1990 (NAIFA)
"Legal Aspects of Easements"
 Spokane, Washington/April 1990 (IR/WA)
"Review of the New URAR"
 Spokane, Washington/December 1993 (NAIFA)
"Uniform Standards of Professional Appraisal Practice"
 Spokane, Washington/May 1994 (NAIFA)
"Market Data Analysis"
 Sandpoint, Idaho/May 1994 (NAIFA)

EXPERIENCE:

Owner, Appraisal Associates in Sandpoint, Idaho (1985-Current)
 Associate Appraiser, Appraisal Associates (1980-85)
 Associate Appraiser, Noonan Appraisers (1977-80)
 Inactive Sales Broker, State of Idaho
 Active Sales Broker, State of Missouri (1974-81)
 Associate Appraiser, Noonan Appraisers (1978-80)

Numerous Court Appearances in Bonner, Boundary, Kootenai Counties
 in Idaho and in St. Louis County, Missouri

APPRAISED REAL PROPERTY IN THE FOLLOWING STATES:

Missouri, Illinois, Idaho, Montana, Oregon and Washington

VALUATION OF THE FOLLOWING TYPES OF REAL PROPERTY:

Apartment Buildings	Office and Professional Buildings
Condominiums	Lakefront
Manufacturing Facilities	Churches
Industrial Properties	Schools
Retail Sales Buildings	Single Family Dwellings
Service Stations	Farms

VALUATION OF THE FOLLOWING TYPES OF REAL PROPERTY continued...

Restaurants	Ranches
Vacant Land	Recreational Retreats
Shopping Center Sites	Subdivisions
Warehouses	Grain Elevators
Sawmills	Sand and Gravel Pits
Timberlands and Stumpage	Beer Distributorship
Golf Courses	Bonner County Airport
Research and Development Centers	Convenience Stores
Motels	Manufactured Home Parks
Marinas	Theaters
Many Others.....	

ASSIGNMENTS COMPLETED FOR:

District of Idaho Department of Justice
 State of Idaho
 County of Bonner
 City of Sandpoint, Idaho
 Farmers Home Administration
 Bank of America/Sandpoint, Coeur d'Alene
 First Interstate Bank/Sandpoint, Bonners Ferry, Boise
 First Security Bank/Sandpoint, Bonners Ferry, Hayden Lake

<i>Pend Oreille Bank/Sandpoint, Idaho, Newport Washington</i>	
<i>Panhandle State Bank/Sandpoint, Bonners Ferry, Priest River</i>	
<i>Transamerica Finance Company</i>	<i>Better Homes & Gardens</i>
<i>Bancshares Mortgage Company</i>	<i>Relocation Service</i>
<i>Equitable Relocation Company</i>	<i>Stars Mortgage</i>
<i>Metropolitan Mortgage Company</i>	<i>Farmers and Merchants Bank</i>
<i>Lenders Services</i>	<i>Moore Financial Service</i>
<i>Credit Union Mortgage Association</i>	<i>Liberty Funding</i>
<i>Comprehensive Marketing Systems, Inc.</i>	<i>Seafirst Private Banking</i>
<i>Sterling Savings & Loan Association</i>	<i>Many More.....</i>
<i>Rainier Financial Services</i>	<i>United Pacific Insurance</i>
<i>Co-op Federal Credit Union</i>	<i>Pacific National Mortgage</i>
<i>Safeway Credit Union</i>	<i>Transamerica Insurance Company</i>
<i>Mountain Bell Company</i>	<i>Safeco Insurance Company</i>
<i>Ticor Title Company</i>	<i>Bonners Ferry Grain</i>
<i>First American Title Company</i>	<i>Wood River Pipeline</i>
<i>Caldwell Banker Relocation</i>	<i>Schweitzer, Inc.</i>
<i>CityFed</i>	<i>Associates Relocation</i>
<i>Washington Water Power</i>	<i>Pac-West Services, Inc.</i>
<i>C-21 Mortgage Company</i>	<i>Relocation Resources</i>
<i>Many More....</i>	

Appraisal Update and/or Completion Report

File No. MOYNE SPRINGS 141

The purpose of this report form is to provide the lender/client with an accurate update of an appraisal under to report a certification of completion. The appraiser must identify the service(s) provided by selecting the appropriate report type.

Property Address **P.O. BOX 442 (MOOSEVELT)**City **MOYNE SPRINGS**State **ND**Unit # **N/A**Local Description **(SEE ATTACHED ADDENDUM)**Sale Code **83845**County **BOUDINARY**Borrower **ESTATE OF MELLYN PETE**Contract This S **N/A**Effective Date of Original Appraisal **10/20/2008**Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe) **N/A**Original Appraised Value **\$ 137,200**Original Appraiser **DAVID MOONMAN**Company Name **120 E. LANE ST. #319, SANDPOINT, ID 83844**Original Lender/Client **JOHN FINNEY, ATT. AT LAW**Address **120 E. LANE ST. #319, SANDPOINT, ID**SUGGESTED APPRAISAL USE: ☒ **UPDATE APPRAISAL** ☐ **REAPPRAISAL**

INTENDED USE: The intended use of this appraisal update is for the lender/client to evaluate the property that is the subject of this report to determine if the property has declined in value since the date of the original appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal update is the lender/client.

SCOPE OF WORK: The appraiser must, at a minimum: (1) concur with the original appraisal; (2) perform an exterior inspection of the subject property from at least the street; and (3) research, verify, and analyze current market data in order to determine if the property has declined in value since the effective date of the original appraisal.

HAS THE MARKET VALUE OF THE SUBJECT PROPERTY DECLINED SINCE THE EFFECTIVE DATE OF THE PRIOR APPRAISAL? ☐ Yes ☒ No

SEE ATTACHED ONE PAGE ADDENDUM.

APPRAISER'S CERTIFICATION: The appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported the appraisal update in accordance with the scope of work requirements stated in this appraisal update report and concur with the analysis and conclusions in the original appraisal.
2. I performed the appraisal update in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal update was prepared.
3. I have updated the appraisal by incorporating the original appraisal report.
4. I have summarized my analysis and conclusions in this appraisal update and attached all supporting data in my work file.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal update assignment, have read the appraisal update report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal update report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

CAREY CALHOUN, CMAA, P. 1 (2)

INTENDED USE: The intended use of this certification of completion is for the lender/client to confirm that the requirements or conditions stated in the appraisal report referenced above have been met.

INTENDED USER: The intended user of this certification of completion is the lender/client.

HAVE THE REQUIREMENTS BEEN COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS STATED BY THE ORIGINAL APPRAISAL REPORT? ☐ Yes ☐ No If No, describe any impact on the opinion of market value.

APPRAISER'S CERTIFICATION: I certify that I have performed a visual inspection of the subject property to determine if the conditions or requirements stated in the original appraisal have been satisfied.

SUPERVISORY APPRAISER'S CERTIFICATION: I accept full responsibility for the certification of completion.

SIGNATURE

ADDITIONAL CERTIFICATION: I hereby certify that this report was transmitted as an "electronic report" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (including state and video recording), or a facsimile transmission of this report containing a copy or representation of my signature, the report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature 

Signature

Name **DAVID MOONMAN R/A**

Name

Company Name **APPRAISAL ASSOCIATES**

Company Name

Company Address **120 E. LANE ST. #319**

Company Address

SANDPOINT, ID 83844

Telephone Number

Telephone Number **208-283-8322**

Date of Signature

Date of Signature and Report **10/21/2008**

State Certification #

Effective Date of Appraisal Update **06/03/2009**

or State License #

Date of Inspection **N/A**

State

State Certification # **CQA 60**

Expiration Date of Certification or License

or State License #

State # **ND**

or Other (describe)

Expiration Date of Certification or License

Expiration Date of Certification or License **9/7/18/2009**

CURRENT LENDER/CLIENT

Name

Company Name **JOHN FINNEY, ATTORNEY AT LAW**Company Address **120 E. LANE ST.**

SANDPOINT, ID 83844

tabbles

EXHIBIT

3

ADDENDUM

Borrower: ESTATE OF MELVIN PETERSON - % J. FINNEY, ATTORNEY AT LAW	File No.: MOYIE SPRINGS 119
Property Address: P.O. BOX 442 (ROOSEVELT)	Case No.:
City: MOYIE SPRINGS	State: ID Zip: 83845
Lender: JOHN FINNEY, ATTORNEY AT LAW	

I APPRAISED THIS PROPERTY ON 10/30/2008. I HAVE NOW BEEN ASKED TO VALUE THE PROPERTY WITH AN EFFECTIVE DATE OF VALUE OF 03/03/2007. THIS ANALYSIS IS TO BE A PORTION OF THE APPRAISAL REPORT COMPLETED WITH AN EFFECTIVE DATE OF VALUE OF 10/30/2008 AND COMPLETED ON 10/31/2008.

THIS IS NOT A STAND ALONE ANALYSIS, IT IS PART OF THE REPORT WITH AN EFFECTIVE DATA OF VALUE OF 10/30/2008. IF YOU HAVE THIS DOCUMENT ALONE DO NOT CONSIDER IT A STANDALONE DOCUMENT.

FOR THIS ANALYSIS, I HAVE INVESTIGATED THE MARKET AND THERE IS NO DATA THAT WOULD CHANGE THE VALUE ESTIMATE OTHER THAN THE BELOW DISCUSSION. FOR THIS ANALYSIS, I HAVE NOT RE-INSPECTED THE PROPERTY.

FOR THIS ANALYSIS, I AM USING A "PAIRED SALE" ANALYSIS THAT OUR FIRM HAS BEEN USING FOR SOME MONTHS FOR DWELLINGS IN THE GENERAL AREAS SURROUNDING THE BONNERS FERRY AREA. MY INVESTIGATION HAS POINTED OUT THAT DURING THE ENTIRE YEAR OF 2008 REAL PROPERTY VALUES HAD DECLINED AT A RATE OF APPROXIMATELY 1% PER MONTH (12% FOR THE YEAR). THERE IS NO MEASURABLE DATA FOR THE YEAR OF 2007, BUT INDIRECT DATA FROM CONSTANT MONITORING OF THE MARKET HAS SUGGESTED THAT THIS 1% WOULD NOT INCLUDE 2007.

IN THE PAIRING SALES ANALYSIS ON RESIDENTIAL PROPERTIES A SALE PROPERTY THAT SOLD IN SAY, 2007 IS "PAIRED" WITH THAT SAME PROPERTY THAT SOLD IN 2008 IN AN EFFORT TO DETERMINE THE DIFFERENCE IN SALE PRICES THEREBY USING THIS INFORMATION TO APPLY TO SALES DURING THAT PERIOD.

THIS APPRAISER IS AWARE THAT THERE HAVE BEEN SOME MONIES SPENT ON THE PROPERTY BETWEEN THOSE TWO DATES (03/03/2007 AND 10/30/2008). IT IS MY ESTIMATION THAT THESE MONIES SPENT ON THE SUBJECT PROPERTY ARE PREDOMINATELY THOSE THAT AMOUNT TO MAINTENANCE, AND NOT NEW MAJOR CAPITAL IMPROVEMENTS SUCH AS A NEW BEDROOM, TOTALLY REMODELED KITCHEN, A NEW BATHROOM, NEW GARAGE, ETC. DUE TO THE FACT THAT THESE ITEMS ARE GENERALLY MAINTENANCE AND REPLACEMENT ITEMS, POSSIBLY EXTENDING THE PHYSICAL LIFE BUT NOT THE ECONOMIC LIFE.

NO UPWARD ADJUSTMENT FOR THESE ITEMS IS TAKEN. IT IS POINTED OUT THE EVEN IF THESE ITEMS WERE FOR SMALLER CAPITAL IMPROVEMENTS, THERE IS INSUFFICIENT MARKET DATA TO MEASURE ANY VALUE DIFFERENCE BASED ON THOSE IMPROVEMENTS.

SO, TAKING THE 2008 ESTIMATE OF VALUE, AND LOOKING BACKWARDS TO THE MARCH 3, 2007 DATE OF VALUE, THE SUBJECT HAD A HIGHER ESTIMATE OF VALUE THAN IN 10/30/2007. THE ESTIMATED VALUE NUMBERS ARE BROKEN DOWN AS FOLLOWING:

BASED ON THE 1% PER MONTH, THE TOTAL TIME ADJUSTMENT IS ESTIMATED AT 9%.

ESTIMATED VALUE ON OCTOBER 30, 2008 IS \$127,500; ADDING THE NINE MONTHS (01/01/2008 TO 10/30/2008), AT 1% PER MONTH OR 9% IS \$127,500; ADD 9% = \$139,000(r).

ESTIMATED VALUE OF THE SUBJECT PROPERTY AS OF 03/03/2007 IS \$139,000.

Appraiser:

Supervisory Appraiser:

Name: DAVID NOONAN IFA

Name:

LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Human Services Division

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder, Ste. B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
Facsimile: (208) 334-6515
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED

2009 JUL 15 P 1:26

STATE OF IDAHO
COUNTY OF BOUNDARY
GLENDA POSTON, CLERK
BY Wilson
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate of

MELVIN PETERSON,

Deceased.

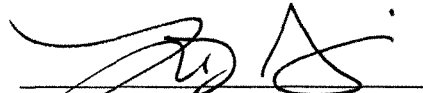
Case No. CV-2007-266

PETITION TO COMPEL SALE
OF HOME AND PAYMENT TO
DEPARTMENT

COMES NOW the Idaho Department of Health and Welfare, by and through Larry L. Goins, Deputy Attorney General, and hereby petitions the Court for an order compelling the Personal Representative to forthwith sell the home of decedent located at P.O. Box 442 (Roosevelt), Moyie Springs, Idaho, and to use the proceeds therefrom along with other available assets of the estate, to pay the claim of the Department with interest but less reasonable costs and expenses of estate administration.

This Petition is supported by the Appraisal Report and Addendum, and the Brief in Support of Petition filed herewith by the Department.

Dated this 10th day of July, 2009.

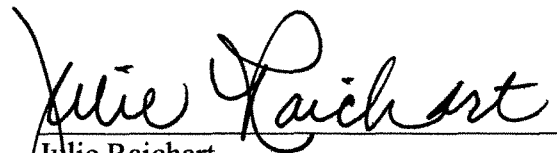

Larry L. Goins
Deputy Attorney General
Attorney for the Department

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail, postage prepaid, on the 10th day of July, 2009 to:

HONORABLE JUSTIN W. JULIAN
MAGISTRATE JUDGE
BOUNDARY COUNTY, IDAHO
PO BOX 419
BONNERS FERRY ID 83805

CATHIE L PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE STREET SUITE 317
SANDPOINT ID 83864


Julie Raichart
Paralegal

LAWRENCE G. WASDEN
ATTORNEY GENERAL

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Human Services Division

LARRY L. GOINS
Deputy Attorney General
Division of Human Services
3276 Elder, Ste. B
P.O. Box 83720
Boise, Idaho 83720-0036
Telephone: (208) 332-7961
Facsimile: (208) 334-6515
ISB No. 2295
[goinsl@dhw.idaho.gov]

FILED

2009 JUL 15 P 1:26

STATE OF IDAHO
COUNTY OF BOUNDARY
JENNIFER POSTON, CLERK
BY Wilson
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate of

MELVIN PETERSON,

Deceased.

Case No. CV-2007-266

BRIEF IN SUPPORT OF PETITION

COMES NOW the Idaho Department of Health and Welfare (Department), by and through Larry L. Goins, Deputy Attorney General, and hereby submits this Brief in Support of Petition to Compel Sale of Home and Payment to Department as follows:

BACKGROUND

On June 12, 2008, the Court entered its Order on Petition to Require Payment of Claim in favor of the Department. Among other things, the Court granted the Department's medicaid estate recovery claim and deemed decedent's life estate interest in his home to be an asset of the estate. The Court further required the Personal Representative to amend her Inventory, list the

life estate interest as an asset of the estate and assign an appropriate value thereto “ at the time of death.” Order at 2.

On September 23, 2009, and upon motion by the Personal Representative, the Court entered an Order Approving Hiring of Appraiser to allow David Noonan to appraise the fee simple value of the home. On October 30, 2008, Mr. Noonan completed his Appraisal Report and valued the home at \$127,500 as of the date of appraisal rather than “ at the time of death” on March 3, 2007. On June 3, 2009, and only after a Motion to Compel Short Form Appraisal by the Department, Mr. Noonan opined in an Addendum that the value of the home at the time of death was \$139,000. The Department filed the Appraisal Report and the Addendum with the Court as a result of the Personal Representative’s failure to do so.

Presuming the Personal Representative lacks sufficient private resources to purchase the decedent’s life estate interest and pay the Department’s claim, the Department filed its Petition to Compel Sale of Home and Payment to the Department. This Brief is filed in support thereof.

ARGUMENT

1. The Appropriate Value of Decedent’s Life Estate Interest Is \$53,712.38.

Pursuant to the appraiser’s opinion contained on page two of the Addendum, the “estimated value of the subject property as of 03/03/2007 is \$139,000.” *See* Notice of Filing Appraisal Report and Addendum. Decedent died at age 83 on March 3, 2007. The value of decedent’s life estate interest at the time of death is computed by using the Life Estate Table found in IDAPA 16.03.05.837.02 (Apr. 2, 2008). The applicable factor for the life estate interest at age 83 is .38642. The appraisal value of the home times this factor equals \$53,712.38.

“Where the language of a rule is plain and unambiguous, courts give effect to the rule as written, without engaging in construction.” *Schroeder v. Department of Transportation*, 2009 Opinion No. 34 at 5 (Idaho Ct. App., Apr. 30, 2009). Because the rule for the valuation of life

estate interest is plain and unambiguous, the Court herein must give full force and effort to the rule. Therefore, the appropriate value of decedent's life estate interest is \$53,712.38.

2. Decedent's Estate Has \$66,466.21 in Available Assets to Pay the Department's Claim.

Given the life estate value and other estate assets contained in the Personal Representative's Inventory filed herein, assets available to pay the Department's claim are computed as follows:

a. Life Estate Interest	
(1) Moyie Springs Home	\$53,712.38
b. Cash and Notes	
(1) Bank Account	1,288.35
(2) Promissory Note	<u>11,465.48</u>
Total	\$66,466.21

Pursuant to Idaho Code § 15-3-805 only reasonable costs and expenses of administration may be deducted from this amount. The approved claims from Principal Financial Group and Boundary Community Hospital may not be paid ahead of the Department under this provision. Principal Financial is clearly a general claimant while the local hospital was obliged to either timely bill medicaid or accept its payments in full. IDAPA 16.03.09.210 (Mar. 30, 2007). Therefore and subject to cost of administration, the decedent's estate has \$66,466.21 in available assets to pay the Department's claim.

3. The Department Is Entitled to Prejudgment Interest.

Pursuant to Idaho Code § 15-3-806 (d), "allowed claims bear interest at the legal rate for the period commencing sixty (60) days after the time for original presentation of the claim has expired...." According to the Affidavit of Publication on file with the Court, Notice to Creditors was first published August 16, 2007. The six month period thereafter (4 months plus 60 days) expired on February 16, 2008, or the time prejudgment interest began to run.

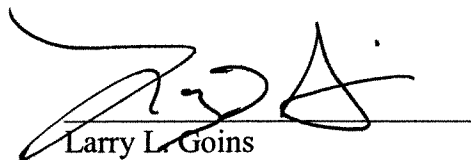
The prejudgment rate of interest under Idaho Code § 28-22-104(1) is 12 percent per annum. Prejudgment interest from February 16, 2008 and through July 10, 2009, computes to \$11,362.70. Per diem interest is \$21.85 thereafter. Prejudgment interest is especially appropriate in the present case since the Personal Representative has been living in the home since decedent died, and has paid no rent to the estate based on his life estate share in the property. Therefore, the Department is entitled to prejudgment interest.

CONCLUSION

For the foregoing reasons, the Court should compel the Personal Representative to forthwith sell the home in Moyie Springs. Her free ride at the Department's expense is over. The Court should also order the Personal Representative to take sale proceeds and pay the Department \$66,466.21, plus allowable prejudgment interest thereon and less reasonable costs and expenses of estate administration.

Dated this 10th day of July, 2009.

IDAHO DEPARTMENT OF
HEALTH AND WELFARE



Larry L. Goins
Deputy Attorney General
Attorney for the Department

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing via U.S. Mail, postage prepaid, on the 10th day of July, 2009 to:

HONORABLE JUSTIN W. JULIAN
MAGISTRATE JUDGE
BOUNDARY COUNTY, IDAHO
PO BOX 419
BONNERS FERRY ID 83805

CATHIE L PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE STREET SUITE 317
SANDPOINT ID 83864



Julie Raichart
Paralegal

FILED
2009 AUG 11 P 2:12

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY**

In the Matter of the Estate of)

MELVIN PETERSON,)

Deceased.)

Case No. CV-2007-266)
BY Glenda Poston CLERK
DEPUTY CLERK

**ORDER GRANTING PETITION TO
COMPEL**

THIS MATTER came before the Court on July 28, 2009, pursuant to the Petition to Compel Sale of Home and Payment to Department, and the Idaho Department of Health and Welfare (Department) appeared through counsel, Larry L. Goins, Deputy Attorney General, while the Personal Representative appeared in person and through counsel, John A. Finney, and the Court having heard argument from respective counsel and with good cause appearing therefor;

IT IS HEREBY ORDERED that the Department's Petition to Compel Sale of Home and Payment to Department be, and the same is hereby, GRANTED.

IT IS FURTHER ORDERED that the Personal Representative shall use all due diligence and vigor to forthwith prepare and list for sale the home located at P.O. Box 442 (Roosevelt), Moyie Springs, Idaho.

IT IS FURTHER ORDERED that the listing price shall be reasonable and reflect fair market value for the home and area.

IT IS FURTHER ORDERED that the Personal Representative shall accept the first reasonable offer received from a qualified buyer.

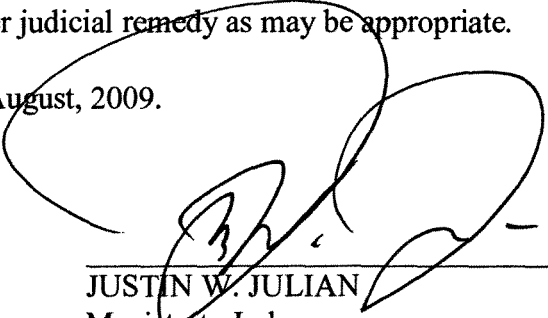
IT IS FURTHER ORDERED that any closing or settlement charges for such items as realtor commissions, title insurance and related items, shall be shared in accordance with the proportionate interests in the home of the Personal Representative (remainderman) and decedent (life estate) at the time of death on March 3, 2007.

IT IS FURTHER ORDERED that the decedent's estate shall be entitled to receive the life estate value of \$53,712, less the decedent's proportionate share of closing or settlement charges incurred.

IT IS FURTHER ORDERED that upon receipt of net sale proceeds by the estate, the Personal Representative shall timely prepare and file all necessary papers to close this estate and pay the Department the monetary value of all assets contained in the estate, less reasonable costs of estate administration as may be determined by the Court, if necessary.

IT IS FINALLY ORDERED that upon the failure of the Personal Representative to comply with this Order, she may be subject to removal and a successor personal representative may be appointed in her place and stead, or such other judicial remedy as may be appropriate.

SO ORDERED this 11th day of August, 2009.



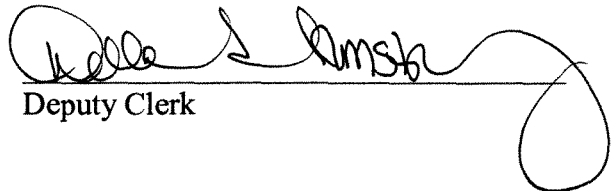
JUSTIN W. JULIAN
Magistrate Judge

CLERK'S CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **ORDER GRANTING PETITION TO COMPEL** was mailed first class, postage prepaid on the 11th day of August, 2009 to:

LARRY L. GOINS
DEPUTY ATTORNEY GENERAL
3276 ELDER, STE B
PO BOX 83720
BOISE, ID 83720

CATHIE PETERSON
C/O JOHN A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE ST STE 317
SANDPOINT ID 83864



Deputy Clerk

ORIGINAL

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
120 East Lake Street, Suite 317
Sandpoint, Idaho 83864
Phone: 208-263-7712
Fax: 208-263-8211
ISB No. 5413

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2009 AUG 20 P 12:59

STATE OF IDAHO
COUNTY OF BOUNDARY
LEWNA POSTON, CLERK
BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate	)	Case No. CV-2007-0266
of,)	
	)	NOTICE OF APPEAL
)	
MELVIN PETERSON,	)	I.R.C.P. 83
)	
	)	Category: L2
Deceased.	)	Fee: \$53.00
)	

TO: THE RESPONDENT IDAHO DEPARTMENT OF HEALTH AND WELFARE, AND
THE RESPONDENT'S ATTORNEY, LARRY L. GOINS, DEPUTY ATTORNEY
GENERAL AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT CATHIE PETERSON, PERSONAL
REPRESENTATIVE OF THE ESTATE OF MELVIN PETERSON, herein
APPELLANT, appeals pursuant to I.R.C.P. 83 and Idaho Code § 17-
201, as follows:

1. The title of the court from which the appeal is taken
is the Magistrate Division of the District Court of the First
Judicial District of the State of Idaho in and for the County of
Boundary, Magistrate Judge Justin W. Julian, presiding.

2. The title of the court to which the appeal is taken is the District Court of the First Judicial District of the State of Idaho in and for the County of Boundary.

3. The date and heading of the judgment or decision from which the appeal is taken is the Order Granting Petition To Compel, filed August 11, 2009.

4. The appeal is taken upon both matters of law and matters of fact.

5. The testimony and proceedings of the original trial or hearing were recorded by the Boundary County Clerk and are in the possession of the Boundary County Clerk. The proceedings resulting in the order were held on July 28, 2009, as well as related proceedings held June 3, 2008.

6. The issues on appeal upon which the appellant intends to assert in the appeal (but such list is not an exhaustive list), and provided that any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal thereafter discovered by the appellant is as follows:

a. Did the Magistrate err in its application and interpretation of Idaho Code § 58-218?

b. Did the Magistrate err in its application and interpretation of IDAPA 16.03.05.833, .837, and .841?

c. Did the Magistrate err in its making findings when no evidence was ever presented?


d. Did the Magistrate err in its purported assertion of jurisdiction over real property vested in a person not a party to the proceeding?

e. Did the Magistrate err in purportedly concluding that the decedent had an interest at the time of death (or alternatively in determining the extent of such interest) in certain real property?

f. Did the Magistrate err in proceeding with bias and animosity toward the personal representative?

g. Upon remand, should the Magistrate be removed from further proceedings in the matter?

Dated this 19th day of August, 2009.


JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. mail, postage prepaid, as indicated, this 19th day of August, 2009 and was addressed to:

Larry L. Goins
Deputy Attorney General
Division of Human Services
P.O. Box 83720
Boise, ID 83720-0036

By: 

Faxed to Verby 8/21/09

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JOHN A. FINNEY
 FINNEY FINNEY & FINNEY, P.A.
 Attorneys at Law
 Old Power House Building
 120 East Lake Street, Suite 317
 Sandpoint, Idaho 83864
 Phone: (208) 263-7712
 Fax: (208) 263-8211
 ISB No. 5413
 Attorney for Appellant

FILED

2009 NOV 13 P 2:08

STATE OF IDAHO
 COUNTY OF BOUNDARY
 CLERK
 [Signature]
 CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate	)	Case No. CV-2007-0266
of,)	
	)	APPELLANT'S BRIEF
)	
MELVIN PETERSON,)	
)	
)	
Deceased.)	
)	
)	

COMES NOW the Appellant, CATHIE PETERSON, PERSONAL
 REPRESENTATIVE OF THE ESTATE OF MELVIN PETERSON, by and through
 counsel, JOHN A. FINNEY, of FINNEY FINNEY & FINNEY, P.A., and
 submits this Appellant's Brief pursuant to the Notice Of Settling
 Transcript On Appeal, filed October 9, 2009, as follows:

I. STATEMENT OF THE CASE

A. Nature Of The Case

This is an appeal pursuant to I.R.C.P. 83 and Idaho Code §
 17-201 in the above referenced estate from the Magistrate
 Division of the District Court of the First Judicial District of

the State of Idaho in and for the County of Boundary, Magistrate Judge Justin W. Julian, presiding. The judgment or decision from which the appeal is taken is the Order Granting Petition To Compel, filed August 11, 2009, which is based upon proceedings held on July 28, 2009, as well as proceedings held June 3, 2008. The nature of the issue on appeal is the application of Idaho Code § 56-218 to the life estate interest held by Melvin Peterson, the Decedent herein, immediately prior to death.

B. Course Of Proceedings In The Court Below

Relevant to the issue upon this appeal, Melvin Peterson died on March 3, 2007. At the time of his death, the Decedent was domiciled of Boundary County, Idaho.

An Application For Informal Probate And Appointment Of A Personal Representative was filed July 26, 2007 and the estate was opened. Cathie Peterson was appointed as Personal Representative of the Estate of Melvin Peterson, with Letters Of Personal Representative issued July 26, 2007.

On April 4, 2008, an Order Granting Petition For Allowance Of Amended Claim was entered allowing a claim in favor of the State of Idaho, Department of Health and Welfare in the sum of \$171,386.94.

On or about May 5, 2008, the State of Idaho, Department of Health and Welfare filed its Petition To Require Payment Of Claim. On May 28, 2009 the Personal Representative's Inventory was filed as well as an Objection To Petition To Require Payment Of Claim. On June 3, 2008 the Petition To Require Payment Of Claim came for hearing, following which an Order On Petition To

Require Payment Of Claim was entered on June 12, 2008. The order provides for the payment of the claim to the extent of available assets and by priority set forth by statute.

On or about July 10, 2009, the State of Idaho, Department of Health and Welfare filed its Petition To Compel Sale Of Home And Payment To Department. The Petition came for hearing on July 28, 2009 came, following which an Order Granting Petition To Compel was entered on August 11, 2009. The order purports to require Cathie Peterson, in her individual capacity to sell real property solely vested in her individual name with a fixed sum paid to the State of Idaho, Department of Health and Welfare.

On August 20, 2009 the Personal Representative filed her Notice Of Appeal pursuant to I.R.C.P. 83 and Idaho Code § 17-201. This proceeding follows.

C. Statement Of Facts

In this matter the Magistrate has not heard any testimony nor taken any evidence. All such matters have come as positions or attachments by counsel and/or essentially as offers of proof. It appears to be undisputed that:

By a Gift Deed dated December 5, 2001, recorded December 6, 2001 as Instrument No. 204218 records of Boundary County, Idaho, Melvin Peterson, a single person, conveyed to Cathie Peterson, a single person, certain real property located in Moyie Springs, Idaho, reserving unto himself a life estate in said property. Melvin Peterson began receiving Medicaid benefits from the State of Idaho, Department of Health and Welfare, some time after December 5, 2001. Melvin Peterson died on March 3, 2007.

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II. ISSUES PRESENTED ON APPEAL

The issues on appeal the appellant identified in the Notice Of Appeal are, as follows:

- Did the Magistrate err in its making findings when no evidence was ever presented?
- Did the Magistrate err in its application and interpretation of Idaho Code § 58-218?
- Did the Magistrate err in its application and interpretation of IDAPA 16.03.05.833, .837, and .841?
- Did the Magistrate err in its purported assertion of jurisdiction over real property vested in a person not a party to the proceeding?
- Did the Magistrate err in purportedly concluding that the decedent had an interest at the time of death (or alternatively in determining the extent of such interest) in certain real property?

III. ARGUMENT

A. Standard Of Review

In the Matter of Estate of Spencer, 106 Idaho 316, 320, 678 P.2d 108, 112 (Idaho App., 1984), the applicable standard of review was set forth as follows:

Ordinarily, in reviewing a decision of the district court on appeal from a magistrate, we must determine from the trial court (magistrate) record whether substantial evidence supports the magistrate's findings of fact and whether those findings support the magistrate's conclusions of law. *Nicholls v. Blaser*, 102 Idaho 559, 633 P.2d 1137 (1981); *Ustick v. Ustick*, 104 Idaho 215, 657 P.2d 1083 (Ct.App.1983). If so, and if correct legal principles have

been applied, then the district court's decision affirming a magistrate's judgment will be upheld. *Id.* Only where the record is so clear as to give the appellate court a complete understanding of the material issues and the basis of the magistrate's reasoning will the absence of findings of fact not result in a remand for adequate findings. See *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982); *In re Estate of Stibor*, 96 Idaho 162, 525 P.2d 357 (1974).

The standard would similarly apply to the District Court's review of a decision of the Magistrate Court in a probate matter.

B. The Magistrate Erred As No Evidence Was Ever Taken And
No Findings Ever Made

As shown by the record and the Transcripts of the proceedings on June 3, 2008 and July 28, 2009, the Magistrate did not hear any testimony nor taken any other evidence, documents or otherwise.

As set forth in the Matter of Estate of Spencer, 106 Idaho 316, 320, 678 P.2d 108, 112 (Idaho App., 1984) (citations omitted), "Only where the record is so clear as to give the appellate court a complete understanding of the material issues and the basis of the magistrate's reasoning will the absence of findings of fact not result in a remand for adequate findings." The Magistrate failed to make any findings of fact upon which to base its conclusions, and failed to make a record to provide an understanding of the basis for the Magistrate's reasoning in entering the Order Granting Petition To Compel.

As set forth below, the Magistrate failed to take any evidence and failed to even set forth findings and conclusion as to the applicability of the statute proffered by the State of Idaho, Department of Health and Welfare. The Magistrate failed

to properly consider the statutes and rules in place.

C. The Magistrate Mis-Applied Idaho Code § 58-218 In
Determining An Interest In The Estate

Idaho Code § 58-218 provided at the time of the Decedent's death in 2007, as follows:

§ 56-218. Recovery of certain medical assistance

(1) Except where exempted or waived in accordance with federal law medical assistance pursuant to this chapter paid on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance may be recovered from the individual's estate, and the estate of the spouse, if any, for such aid paid to either or both:

(a) There shall be no adjustment or recovery until after the death of both the individual and the spouse, if any, and only at a time when the individual has no surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c.

(b) While one (1) spouse survives, except where joint probate will be authorized pursuant to section 15-3-111, Idaho Code, a claim for recovery under this section may be established in the estate of the deceased spouse.

(c) The claim against the estate of the first deceased spouse must be made within the time provided by section 15-3-801(b), Idaho Code, if the estate is administered and actual notice is given to the director as required by subsection (5) of this section. However, if there is no administration of the estate of the first deceased spouse, or if no actual notice is given to the director as required by subsection (5) of this section, no claim shall be required until the time provided for creditor claims in the estate of the survivor.

(d) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

(2) Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of

such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court.

(3) Except where there is a surviving spouse, or a surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c, the amount of any medical assistance paid under this chapter on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance is a claim against the estate in any guardianship or conservatorship proceedings and may be paid from the estate.

(4) For purposes of this section, the term "estate" shall include:

(a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and

(b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

(5) Claims made pursuant to this section shall be classified and paid as a debt with preference as defined in section 15-3-805(5), Idaho Code. Any distribution or transfer of the estate prior to satisfying such claim is voidable and may be set aside by an action in the district court. The personal representative of every estate subject to a claim under this section must, within thirty (30) days of the appointment, give notice in writing to the director of his or her appointment to administer the estate. However, if an exempt property allowance claim is made in an estate subject to a claim under this section by one (1) or more persons not described in subsection (2) of this section, then, to the extent such exempt property allowance claim exceeds the fair market value of the actual personal property of the decedent held by the estate subject to a claim under this section (including, but not limited to, such items as household furniture, automobiles, furnishings, appliances, and personal effects), the persons making such exempt property allowance claim must file with the court, and with the personal representative or administrator of the estate, and with the department, a written statement under oath containing the following:

(a) A statement that no personal property of the decedent has been transferred without adequate

consideration to any person or entity, including any one (1) or more of the persons making the exempt property allowance claim, to the actual knowledge of any of the persons making the exempt property allowance claim, within a time period commencing one (1) year prior to the death of the decedent and ending on the date of the statement; or

(b) A statement that personal property of the decedent has been transferred without adequate consideration to any person or entity, including one (1) or more of the persons making the exempt property allowance claim, within a time period commencing one (1) year prior to the death of the decedent and ending on the date of the statement, to the actual knowledge of any of the persons making the exempt property allowance claim, and stating the fair market value of the personal property so transferred, and stating a reasonable description of such property, and stating the method of determining the fair market value of the personal property so transferred. If the written statement indicates that there has been such a transfer of personal property, then the fair market value of the personal property so transferred shall be subtracted from the remaining exempt property allowance claim, after subtraction of the personal property held by the estate, as described above, and only any still remaining portion of the exempt property claim may be paid by the estate to the persons making the exempt property allowance claim. The statement submitted under paragraph (a) or (b) of this subsection, must be signed under oath by all persons making the exempt property claim.

(6) The department may file a notice of lien against the property of any estate subject to a claim under this section.

(a) In order to perfect a lien against real or personal property, the department shall, within ninety (90) days after the personal representative or successor makes a written request for prompt action to the director, or three (3) years from the death of the decedent, whichever is sooner, file a notice of lien in the same general form and manner as provided in section 56-218A(3)(a), Idaho Code, in the office of the secretary of state, pursuant to section 45-1904, Idaho Code. Failure to file a notice of lien does not affect the validity of claims made pursuant to this section.

(b) The department may release the lien in whole or in part to permit the estate property to be administered by a court-appointed personal representative.

(c) The department may foreclose its lien, without

probate, in any of the following circumstances:

- (i) Where no personal representative has been appointed after one (1) year from the date of death of the survivor of both the individual and spouse, if any;
- (ii) Where the property has been abandoned by the decedent's heirs or successors, if any;
- (iii) Where the real property taxes that are due and payable have remained unpaid for two (2) years and, after demand by the department, the heirs or successors, if any, have failed to seek appointment or pay the property taxes; or
- (iv) Where all parties interested in the estate consent to foreclosure of the lien.

(7) The director shall promulgate rules reasonably necessary to implement this section including, but not limited to, rules establishing undue hardship waivers for the following circumstances:

- (a) The estate subject to recovery is income-producing property that provides the primary source of support for other family members; or
- (b) The estate has a value below an amount specified in the rules; or
- (c) Recovery by the department will cause the heirs of the deceased individual to be eligible for public assistance.

(8) The cause of action to void a transfer without adequate consideration established in this section shall not be deemed to have accrued until the department discovers, or reasonably could have discovered, the facts constituting the transfer without adequate consideration.

The State of Idaho, Department of Health and Welfare

("Department") has taken the position that the life estate held by Melvin Peterson, by the operation of Idaho Code § 56-218, has a value in the estate. The language relied upon is set forth in Idaho Code § 56-218(4), was at the time of the Decedent's death, as follows:

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(4) For purposes of this section, the term "estate" shall include:

(a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and

(b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

The operative language in paragraph (4) does not show any intention by the legislature to modify the common law principals of property ownership, specifically including a life estate interest. The language specifically recognizes that the legal title or interest is not fee simple absolute, by the the parenthetical "(to the extent of such interest)". By this language the estate (or interest) of the remainderman and the estate (or interest) of the life estate holder at common law are recognized.

As set forth by the Idaho Supreme Court in Tobias v. State Tax Commission, 85 Idaho 250, 255, 378 P.2d 628, 630 (1963),

Estates or interests in lands are of two kinds: freehold estates, consisting of any estate of inheritance or for life in either a corporeal or incorporeal hereditament existing in or arising from real property of free tenure; and estates less than freehold, consisting of estates for years, estates at will and estates at sufferance. Fowler v. Marion & Pittsburg Coal Co., 315 Ill. 312, 146 N.E. 318.

' * * * a freehold estate is an interest in real property, that is measured at least by a life, and * * * includes all lifetime interests as well as for such as are greater. * * * A life estate is an interest in real property, the duration of which is limited by the life of some person. * * * It is of no consequence how uncertain the duration of the estate may be. If it can or may continue during a life, it is a freehold or life estate. It outranks an estate for hundreds

of years, because it is said that no one knows how long a man may live.' Thompson on Real Property, Vol. 2, § 780.

An estate measured by a tenant's life is a freehold, though subject to termination upon a future contingency during the lifetime. Jones v. Jones, 281 Ill. 595, 117 N.E. 1013.

A life estate is followed by a remainder interest. In this action, the remainder interest was held at the time of the instrument of conveyance and is now held by Cathie Peterson in her individual capacity. The remainder interest is not held by the Estate or by Cathie Peterson in her capacity as Personal Representative of the Estate. As set forth in Wilson v. Linder, 110 P. 274, 275 (Idaho 1910),

* * * they take the property, not by descent or as successors of the [deceased], but by virtue of the remainder which was created for them at the execution of the deed to him. This remainder, although not capable of immediate enjoyment (Id. section 690), and therefore denominated a 'future interest,' is, nevertheless, an estate in the property capable of being transferred in the same manner as a present interest. (Id. § 699).

Lastly, a life estate terminates upon the moment of death, and the deceased person at the moment of death, has no interest or estate. The remainder interest previously vested, becomes the present possessory interest at the moment of death. As set forth in Coats v. Harris, 75 P. 243, 245 (Idaho 1904),

The title to property is always in some one, and in this case upon the death of Levi Harris it immediately vested in Alvin M. Harris, and if he had died without the transfer to his mother, his children would have inherited it. State v. Stevenson et al. (Idaho) 55 Pac. 886; Page on Wills, §§ 657, 658, 659, 695.

Even pursuant to Idaho Code § 56-218(4), the life estate interest held by Melvin Peterson up to the moment of this death, terminated at the moment of this death. The Magistrate erred in purportedly concluding that the decedent had an interest at the

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time of death in certain real property based upon a life estate.

D. The Magistrate Mis-Applied Idaho Administrative Code Provisions in 16.03.05.831 to .841 In Determining An Interest In The Estate

The Idaho Administrative Code provisions set forth in 16.03.05.831 through .841, provide for a penalty for transfers of assets prior to obtaining Medicaid assistance. The State of Idaho, Department of Health and Welfare proffered that I.A.C. 16.03.05.837 provides for a valuation of the life estate held by Melvin Peterson prior to death. The Magistrate mis-applied the provisions of .837, which provide the calculation for a penalty imposed for a transfer for less than fair market value during the applicable look back period. Idaho Administrative Code 16.03.08.837 provides, in relevant part, as follows:

01. Transfer of a Remainder Interest. When a life estate in real property is retained by an individual, and a remainder interest in the property is transferred during the look-back period for less than the fair market value of the remainder interest transferred, the value of the uncompensated remainder is subject to the asset transfer penalty as described in Sections 831 through 835 of these rules. To compute the value of the life estate remainder, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table:

TABLE 837.01 -
REMAINDER TABLE

[table omitted, except for:]
Age 83, Remainder = .61358

02. Transfer of a Life Estate. When a life estate in real property is transferred by an individual during the look-back period for less than fair market value, the value of the life estate is subject to the asset transfer penalty as described in Sections 831 and 835 of these rules. To compute the value of the life estate, multiply the fair market value

of the real property at the time of transfer by the life estate factor for the participant's age at the time of transfer listed in the following table:

TABLE 837.02 -
LIFE ESTATE TABLE

[table omitted, except for:]
Age 83, Life Estate = .38642

Idaho Administrative Code 16.03.08.833 provides for the applicable look back-periods with transfers prior to February 8, 2008 having a thirty-six (36) month look-back period. In addition, Idaho Administrative Code 16.03.08.841 provides for Penalty Exceptions To Asset Transfers, and .04 thereof provides for transfers to adult children that provide care. The only scenario under which these provision would apply to Melvin Peterson, would be in determining if a transfer was made during the look-back period for less than fair market value and what the applicable penalty period (unless an exception applied) would be imposed prior to receiving Medicaid coverage. The tables are inapplicable to determining the claimed value of a life estate at the moment of death. The tables provide for valuations for transfers made during life, at the time of transfer. The tables do not apply as urged by the State of Idaho, Department of Health and Welfare.

The Magistrate erred in purportedly concluding that the decedent had an interest at the time of death and in purportedly determining the extent of such interest, in certain real property based upon a life estate.

E. The Magistrate Does Not Have Jurisdiction Over Real

Property Vested In A Person Not A Party To The
Proceeding (Cathie Peterson in her individual capacity)
And Does Not Have Jurisdiction Over Real Property Not
Vested In the Estate

The State of Idaho, Department of Health and Welfare seeks relief (sale of real property) against real property that is not a part of the Estate and which is not vested in the Estate. There is no authority in the statutes cited for any such relief to the State of Idaho, Department of Health and Welfare in the administration of in the probate Estate. There is no authority for the Magistrate Court to order a person to sell their property. The Magistrate has no jurisdiction over Cathie Peterson in her individual capacity.

Idaho Code § 56-218(b) is not authority for the proposition that a third party must sell its property in an estate proceeding. There is no cause of action or claim against the third party or the third party's real property properly able to be brought in the probate proceeding. The vested owner of the property is Cathie Peterson, in her individual capacity.

At the hearing of July 28, 2009, the State of Idaho, Department of Health and Welfare, unequivocally conceded as follows:

* * *

COURT: So Mr. Goins, if - if the decedent has simply Quitclaimed in full fee simple the property to his daughter in 2001 and then began receiving the services for which the Department is now seeking reimbursement, it looks like

beginning March 1st, 2003, would you have any remedy under those facts?

MR. GOINS: No.

COURT: You'd be completely out?

MR. GOINS: We would.

COURT: So . . .

MR. GOINS: Unless within a four year period from the date of transfer we could have filed a district Court action to set aside based upon, uh, uh, inadequate consideration for that transfer.

* * *

Transcript 07/28/2009, Page 9-10. The Life Estate ceased at the moment of death, and the property is vested and has been vested since the deed of 2001 in Cathie Peterson.

F. The Estate Is Entitled To Recover Attorney Fees On Appeal To The District Court

The Estate is entitle to recover attorney fees against the State of Idaho, Department of Health and Welfare, pursuant to Idaho Code § 12-117. The application of the statute is explained in another estate involving another Medicaid recovery claim by the State of Idaho, Department of Health and Welfare in In re Estate of Kaminsky , 141 Idaho 436, 439, 111 P.3d 121, 124 (Idaho, 2005), as follows:

Idaho Code § 12-117, which governs the award of attorney fees in proceedings between persons and state agencies, provides:

Unless otherwise provided by statute, in any administrative or civil judicial proceeding involving

as adverse parties a state agency, a city, a county or other taxing district and a person, the court *shall* award the prevailing party reasonable attorney's fees, witness fees and reasonable expenses, if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law.

(Emphasis added). Idaho Code § 12-117 is not a discretionary statute. It provides that the court *shall* award attorney fees upon a finding that the state agency did not act with a reasonable basis in fact or law. *Idaho Dept. of Law Enforcement v. Kluss*, 125 Idaho 682, 685, 873 P.2d 1336, 1339 (1994). The policy behind I.C. § 12-117 is: "1) to serve as a deterrent to groundless or arbitrary agency action; and 2) to provide a remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges or attempting to correct mistakes agencies never should ha[ve] made." *Id.*, (quoting *Bogner v. State Dep't of Revenue & Taxation*, 107 Idaho 854, 859, 693 P.2d 1056, 1061 (1984)).

Here, the Department's action invokes both purposes of the statutory policy. The action was groundless because the Department clearly waited too long to present its claim. It was not even required to do so. It is appropriate to discourage such action. Further, the Department's action placed an unjustified financial burden on the Estate. Thus, we award attorney fees on appeal to the Estate pursuant to I.C. § 12-117.

Appeals from the Magistrate Division to the District Court are governed by I.R.C.P. 83(a) et seq. Berning v. Drumwright, 122 Idaho 203, 832 P.2d 1138 (1992). Attorney fee statutes, such as Idaho Code § 12-117 are applicable on appeal to the District Court. The procedure for determining the amount of such fees is governed by Idaho Appellate Rules 35 and 41. I.R.C.P. 83(x).

The State of Idaho, Department of Health and Welfare has proffered a position that Idaho Code § 56-218(4) creates an interest in real property vested in an estate involving Medicaid, when a life estate was held by the decedent prior to death, that the valuation tables for transfers for less than fair market value during the look-back periods in I.A.C. 16.03.05.837 are the

value of the claimed Medicaid life estate interest, and that the Magistrate can compel a third-party to sell real property which is in no way vested in the Estate. This position is without a reasonable basis in law or fact, and attorney fees should be awarded to the Estate to discourage such action and to allow recovery for the unjustified financial burden placed on the Estate.

IV. CONCLUSION

The Order Granting Petition To Compel, for the grounds set forth above, was entered upon reversible error, and is not supported by fact or law, and should be reversed. The Estate is entitled to an award of reasonable attorney fees incurred in this appeal to the District Court pursuant to Idaho Code § 12-117 and is entitled to an award of costs.

DATED this 12th day of November, 2009.

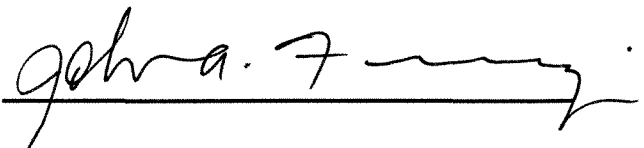

JOHN A. FINNEY
Attorney for Appellant Estate

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated this 12th day of November, 2009 and was addressed to:

Larry L. Goins
Deputy Attorney General
Division of Human Services
P.O. Box 83720
Boise, ID 83720-0036
(Via U.S. Mail)

The Honorable Steve Verby
Bonner County Courthouse
(Via Hand Delivery)



FILED

2009 DEC 14 P 3:01

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

STATE OF IDAHO
COUNTY OF BOUNDARY
CLERK
DEPUTY CLERK

In The Matter of The Estate of:

MELVIN PETERSON,

Deceased.

Case No. CV 2007-0266

RESPONDENT'S BRIEF

Appeal from the Magistrate Division of the District Court of the First Judicial District
of the State of Idaho, in and for the County of Boundary.

HONORABLE JUSTIN W. JULIAN, PRESIDING

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STATEMENT OF THE CASE

Nature of the Case

This is a Medicaid estate recovery case governed by Idaho Code § 56-218. "Medicaid estate recovery" is a program required by federal Medicaid law that seeks to recover assets of deceased Medicaid recipients, from their estates, in order to reimburse the taxpayers for expenditures made during the Medicaid recipient's life. This case involves a life estate interest which the Medicaid recipient had retained when he gifted his real property to his daughter. The Department seeks to recover the value of that life estate interest pursuant to Idaho Code § 56-218(4)(b).

Course of Proceedings

Cathie Peterson was appointed personal representative in this matter July 26, 2007. The Department filed a "Claim Against Estate," and an "Amended Claim Against Estate," each of which was disallowed by the personal representative. Upon the petition of the Department, and after a hearing, the Court on, April 4, 2008, entered an "Order Granting Petition for Allowance of Amended Claim." This order approved the Department's claim in the amount of \$171,386.94.

On May 5, 2008, the Department filed a "Petition to Require Payment of Claim" asking, among other things, for the court to order "the Personal Representative to promptly pay the Department's Amended Claim Against Estate." After a hearing held on June 3, 2008, the court entered its "Order on Petition to Require Payment of Claim" granting the Department's petition, and ordered that "the life estate interest decedent held in real property at the time of death, be and the same is hereby, deemed to be [an] asset of the estate for the limited purpose of medicaid estate recovery by the Department." The court also ordered, among other things, that the

personal representative pay the Department's claim "to the extent of available assets in the estate."

On August 6, 2008, the personal representative filed a "Motion to Hire Appraiser." After a hearing, the court entered its "Order Approving Hiring of Appraiser." The appraisal, showing a value of \$139,000 at the time of death, was filed with the court through a "Notice of Filing Appraisal Report and Addendum" on July 15, 2009.

On July 15, 2009, the Department filed its "Petition to Compel Sale of Home and Payment to Department." After a hearing the court entered its "Order Granting Petition to Compel" on August 11, 2009. This appeal followed.

Statement of the Facts

Melvin Peterson ("Melvin") was born [REDACTED] and died at the age of 83 on March 3, 2007. Petition to Require Payment of Claim, ¶ 1. Prior to his death, but after reaching the age of 55, Melvin applied for and received state medical assistance (Medicaid) benefits in the amount of \$171,386.94. Petition to Require Payment of Claim, ¶ 2. Melvin owned real property in Moyie Springs which, on December 6, 2001, he conveyed to his daughter Cathie Peterson, retaining a life estate. Exhibit "A" to Petition to Require Payment of Claim. Melvin possessed this life estate interest at the time of his death.

ISSUES ON APPEAL

The personal representative did not number the issues presented for appeal. For clarity in argument, the Department sets forth the personal representative's issues and numbers them here:¹

1. Did the Magistrate err in its making findings when no evidence was ever presented?
2. Did the Magistrate err in its application and interpretation of Idaho Code § 58-218?
3. Did the Magistrate err in its application and interpretation of IDAPA 16.03.05.833, .837, and .841?
4. Did the Magistrate err in its purported assertion of jurisdiction over real property vested in a person not a party to the proceeding?
5. Did the Magistrate err in purportedly concluding that the decedent had an interest at the time of death (or alternatively in determining the extent of such interest) in certain real property?

ADDITIONAL ISSUES ON APPEAL

1. Whether the Department should be awarded its attorney fees on appeal pursuant to Idaho Code § 12-117.

¹By restating the personal representative's issues, the Department does not agree that all of these issues are properly before the court. *See* discussion below.

ARGUMENT

I.

ISSUES ARISING FROM THE MAGISTRATE'S JUNE 12, 2008, ORDER, AND PRIOR ORDERS, ARE FINAL, COMPLETE AND NO LONGER SUBJECT TO APPEAL.

The order which the personal representative appeals from here is dated August 11, 2009. The personal representative, however, attempts to challenge issues from the Magistrate's "Order on Petition to Require Payment of Claim" which was entered more than a year earlier on June 12, 2008. The matters decided in that prior order are final, conclusive, and not subject to challenge in this appeal.

A. Probate Petitions, Unlike Ordinary Civil Litigation, Are Separate, Independent Actions.

Probate differs from regular civil litigation. Except for supervised administration, each probate petition is a separate, independent, matter:

15-3-107. Scope of proceedings—Proceedings independent—Exception –
Unless supervised administration as described in Part 5, chapter 3, of this code is involved, (1) each proceeding before the court or registrar is independent of any other proceeding involving the same estate . . .

Idaho Code § 15-3-107. Unlike regular civil litigation, probate is not a single continuous proceeding. The Department's "Petition to Require Payment of Claim" was an independent action which was concluded by the court's June 12, 2008 order. Matters arising from that order, and prior to it, are final and conclusive and are not subject to challenge here. The June 12, 2008, order included the following:

IT IS HEREBY ORDERED that the Petition to Require Payment of Claim filed by the Department, be and the same is hereby, granted to the extent of available assets in the estate, and the order of priority of the claim, as set forth by statute.

IT IS FURTHER HEREBY ORDERED that pursuant to Idaho Code § 56-218 (4)(b), the life estate interest decedent held in real property at the time of death, be and the same is hereby, deemed to be any [sic] asset of the estate for the limited purpose of medicaid estate recovery by the Department.

Order on Petition to Require Payment of Claim, p. 1. The personal representative improperly attempts to challenge these holdings in appeal in her issues 2, 4, and 5.

B. The Magistrate's June 12, 2008, Order Directing Payment of the Department's Claim from the Life Estate Interest is Final, Conclusive, and Not Subject to Challenge Here.

Because probate differs from regular civil litigation, probate has a specific statute to define finality of probate matters for appeal. Idaho Code § 17-201 provides, in part, as follows:

17-201. Appealable judgments and orders. – An appeal may be taken to the district court of the county from a judgment, or order of the magistrates division of the district court in probate matters:

* * *

4. Against or in favor of setting apart property, or making an allowance for a widow or child.

5. Against or in favor of directing the partition, lease, mortgage, sale or conveyance of real property.

* * *

7. Refusing, allowing or directing the distribution or partition of an estate, or any part thereof, or the payment of a debt, claim, legacy or distributive share.

* * *

Idaho Code § 17-201 (underline added).

The June 12, 2008, order made two important decisions that were appealable within 42 days after the entry of the order: First, the order required the payment of the Department's claim. This was appealable under subsection (7). Second, the order set aside the life estate interest as an asset of the estate for purposes of estate recovery and the payment of the Department's claim. This effectively ordered the real property to be partitioned for purposes of payment of the

Department's claim. This was appealable under subsection (4), (5), and (7). The personal representative, however, did not appeal.

In appeal issues 2, 4 and 5, the personal representative attempts to challenge the June 12, 2008, order setting apart the life estate as an asset of the estate for estate recovery and requiring the Department's claim to be paid, if necessary, from those assets. When appealable orders are not appealed within the time permitted, they become final and are no longer subject to challenge. In re Lundy's Estate, 79 Idaho 185, 190, 312 P.2d 1028, 1030-1 (1957). Issues 2, 4, and 5 are final and no longer subject to appeal.

The case of Wilson v. Fackrell, 54 Idaho 515, 34 P.2d 409 (1934) involved a petition for specific performance of a contract to make a gift. The probate court entered an order requiring the administrator to convey a two-thirds interest in real property to the petitioner. The order was reversed by the District Court. On appeal to the Supreme Court, the petitioner contended the probate court order was not appealable. The Supreme Court found the argument without merit:

The contention is without merit. Where, as in this case, the probate court decrees specific performance of a contract, one objecting to the petition has no remedy except by appeal, and his right to do so is granted by I. C. A. § 11-401, which provides:

“An appeal may be taken to the district court of the county from a judgment, or order of the probate court in probate matters: ***
5. Against or in favor of directing the *** conveyance of real property.”

Wilson v. Fackrell, 54 Idaho at ___, 34 P.2d at 410. In this case, by ordering that the life estate interest was subject to the Department's claim, the magistrate, in essence, ordered the partition of the real property, a portion of which was a part of the decedent's estate for purposes of Medicaid estate recovery.

Similarly, in a recent, unreported, decision from the state of Montana, the court found an order requiring payment in compensation for a life estate interest in real property to be an appealable order. In the case of Estate of Burton, 209 WL 2217535 (Mont. 2009) (copy attached) the decedent's will left a life estate in certain real property to his domestic partner, Vanek. The decedent's ex-wife and business partner, Geshell, was appointed personal representative. The probate court held that the interest granted to Vanek had become a financial interest and upon a petition for allowance, on September 30, 2005, ordered Geshell to pay \$129,679 to Vanek in compensation for the life estate interest. More than a year later, the personal representative, Geshell, appealed a number of other issues in the probate case and also attempted to appeal the September 30, 2005, order as well. The Montana Supreme Court, however, held that the September 30, 2005, order had been an appealable order, and the personal representative having failed to appeal that order, the issues were waived:

Geshell's appeal of the September 30, 2005 order to pay Vanek \$129,679 for the life estate is untimely under M.R.App. P. 1 (2005). A party in a civil case may appeal from a judgment or order "refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share...." M.R.App. P. 1(b)(3) (2005). M.R.App. P. 5(a)(1) (2005) requires that a civil appeal be filed within 30 days from entry of judgment. Geshell failed to appeal the September 30, 2005 order within 30 days of Vanek filing her entry of judgment on October 18, 2005. Thus, we conclude that Geshell waived her right to appeal the District Court's decision to grant Vanek \$129,679 as her financial interest in lieu of the life estate.

Estate of Burton, slip op. at 2.

In this case, the June 12, 2008, order was an appealable order. Having failed to appeal that order, issues 2, 4 and 5 are no longer subject to appeal.

C. The June 12, 2008, Order Should Have Concluded this Matter, Leaving Only an Appraisal and a Mechanical Application of the Probate Code Priorities.

The June 12, 2008, order decided all of the important issues in this matter. That order should have concluded the Department's litigation in this estate. Beyond the substantive issues decided in that proceeding, the order also required the personal representative to add the life estate to the estate inventory and to assign an appropriate value. Assigning a value to the life estate interest was a simple matter of valuing the real property, and then applying a mathematical calculation from life estate valuation tables.

The personal representative clearly saw this as a mechanical process, where only the value of the real property at the time of the death of the Medicaid recipient was in question and then the value of the life estate could be determined by application of the life estate tables. At the hearing that resulted in the June 12, 2008, order, the attorney for the personal representative stated:

MR. FINNEY: Correct. Date of death and – I mean the factoring table is nothing more than an actuary table. It's – it's an actuary table that applies to some value. We've got an offer, I guess, of the value but we disagree with it and – I don't anticipate them showing up in the – in the Amended or Supplemental, Court ordered Inventory or whatever – whatever we end up labeling it but, um, I see that determination as another day. But I see the Court ordering today, as the Court's going to enter and order, is that we have to assess or assign a value to the quote life estate interest and – and file an amended document in Court and if the State's in agreement with then we probably won't have any objections. If the State's in disagreement we'll have objections and have to have an evidentiary hearings that I would submit can't come in on my opinion of value and Mr. Goins opinion of value. I'd actually like to have some – some evidence to make that determination.

Tr. (Hearing of June 3, 2008), p. 18, L. 11-22 (underline added).

Subsequently, the personal representative sought, and obtained an appraisal of the real property. This appraisal was obtained by the personal representative, pursuant to the order she had sought. However, she did not file the appraisal with the court.² That was done by the Department on July 15, 2009, through its "Notice of Filing Appraisal Report and Addendum." As with other probate documents, this document is deemed to include an oath and affirmation. Idaho Code § 15-1-310. Therefore, it could appropriately be considered by the court. The personal representative has not objected to this appraisal. Indeed, how could she? She requested it. She selected the appraiser.

Even after having the appraisal in hand, the personal representative refused to comply with the court's June 12, 2008, order. Consequently, it was necessary for the Department to bring a petition to compel the personal representative to act. The Department did so by filing its "Petition to Compel Sale of Home and Payment to the Department." The Department's "Petition to Compel Sale of Home and Payment to the Department" sought to compel the personal representative to comply with the court's prior order by selling the real property in order to pay the Department's claim. It is from the order establishing the value of the life estate (which the personal representative should have done once the appraisal was complete), and requiring the property to be sold to pay the Department's claim, that the personal representative appeals. However, she is also attempting to reach the June 12, 2008, issues by refusing to comply with that order and forcing another proceeding to compel compliance. The order appealed from, the "Order Granting Petition to Compel" entered August 11, 2009, does not revisit these issues. It

²This is possibly because the appraised value was substantially higher than the assessed value which the Department had offered to use in calculating the value of the life estate.

merely gives the personal representative specific instructions for complying with the prior order by requiring the estate property to be sold and the Department's claim to be paid. Only issues 1 and 3 are from the August 11, 2009, order which is the subject of this appeal. The other issues are final and not subject to appeal.³

II.

THE PERSONAL REPRESENTATIVE HAS FAILED TO IDENTIFY ANY ISSUE OF FACT THAT WOULD REQUIRE FORMAL FINDINGS BY THE MAGISTRATE.

In the personal representative's first issue on appeal, she complains that the magistrate failed to issue findings of facts. Findings of fact are required when matters are tried to the court without a jury. Rule 52(a), Idaho Rules of Civil Procedure. In this case, there was no trial of any issue of fact. This is because the underlying facts were presented to the court in the form of sworn statements, and no factual issue was ever raised. While the Notice of Appeal states that the court's August 11, 2009, order was appealed "upon both matters of law and matters of fact" (Notice of Appeal, ¶ 4), the issues presented in Appellant's Brief are all issues of law, not fact. The personal representative does not identify any factual issues. He has identified no offer of proof, and no objection to any of the facts presented by the petitions before the court.

Probate petitions are deemed to include an oath or affirmation:

15-1-310. Oath or affirmation on filed documents – Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

³Should the District Court find that the June 12, 2008, order was not an appealable order and the issues decided there are subject to appeal here, the Department has provided its arguments to those issues in the appendix to this brief.

Idaho Code § 15-1-310 (underline added). Therefore, the facts set forth in the petitions establish the underlying facts needed for the court to decide the issues of law presented. The personal representative had every right to file objections and put any of those facts into issue. This could have been done by filing written objections, counter-affidavits, or by voicing objections and offers of proof on the record. None of this was done. As stated in the Matter of Estate of Spencer, 106 Idaho 316, 678 P.2d 108 (App.1984), cited by the personal representative, a person wishing to contest a probate petition must make proper objections on the record:

As a general rule, if a person interested in an estate wishes to contest an account presented by the executor,

he must make proper objections In adjudicating on an account the personal representative occupies the same status as the plaintiff in an ordinary civil action and the objector ... occupies the same position as the defendant, while the report of the representative and the exceptions thereto stand as the pleadings of the parties and limit the issues to be tried. [34 C.J.S. Executors and Administrators § 883 (1942) (footnotes omitted).]

Estate of Spencer, 106 Idaho at 320, 678 P.2d at 112. In this case, the personal representative has failed to identify any fact, to which he appropriately objected on the record, which might have required an evidentiary hearing with the resulting finding of facts.

III.

THE MAGISTRATE CORRECTLY DETERMINED THE VALUE OF THE LIFE ESTATE INTEREST.

In her third issue on appeal, the personal representative contends that the magistrate incorrectly used the Department's rules governing life estate values in establishing the value of the life estate. Again, however, this issue arises in the context of the Department's "Petition to

Compel Sale of Home and Payment to the Department.” The June 12, 2008, order had required as follows:

IT IS FINALLY HEREBY ORDERED that the Personal Representative of the estate, be and she is hereby, directed to further amend the Personal Representative's Inventory and assign an appropriate value to decedent's life estate interest held in real property at the time of death.

Order On Petition to Require Payment of Claim, p. 2 (underline added). It was the personal representative's refusal to comply with this order that prompted the Department's petition to compel. Even at the hearing of the matter, the personal representative refused to offer any reasonable valuation of the life estate interest, and wanted only to continue to argue that the life estate had no value after the death of the Medicaid recipient, which issue had already been decided in the June 12, 2008, order. *See* Tr. (Hearing of July 28, 2009), p. 4, L. 3 to p. 5, L. 9, and p. 8, L. 9-23. Just as in argument before the magistrate, in her Appellant's Brief the personal representative still fails to suggest a reasonable value for the life estate, or even to suggest a reasonable alternative methodology for calculating the value (from, for example I.R.S. or insurance company actuarial charts). She only wants to re-argue the issues decided against her in the June 12, 2008, order. The magistrate chose the only reasonable valuation method provided by either party by adopting the Department's life estate valuation tables found in Department rules.

Obviously, life estates have value. These are values that are determined every day for various reasons. The magistrates's June 12, 2008, order required the personal representative to value the life estate “at the time of death.” The Department has adopted rules for establishing these values for Medicaid recipients. The life estate valuation tables are found at IDAPA

16.03.05.837. The tables are adopted from the Social Security POMS (Program Operation Manual System)⁴ and are, therefore, the same valuation tables the Social Security Administration would use.

While the personal representative is correct that these tables would be used in determining the asset transfer penalty if the life estate had been gifted away during life, there is no reason the life estate tables cannot be used in all circumstances where the value must be determined for Medicaid purposes. Certainly, there is no language in the rules that places limits on their use to only calculating transfer penalties. Had the Medicaid recipient made a voluntary transfer moments before his death, these are undisputably the tables that would be used to determine the value he had given away. It is logical to use the same tables to determine the value passing at death to the remainderman which is recoverable through estate recovery.

IV.

THE MAGISTRATE CORRECTLY ORDERED THE PERSONAL REPRESENTATIVE TO LIQUIDATE ESTATE ASSETS TO PAY THE DEPARTMENT'S CLAIM.

In her fourth issue on appeal, the personal representative argues that the court lacked the authority to order her to sell the real property, jointly owned by her and by the estate, in order to satisfy the Department's claim. In making this argument, she lumps two legal issues into one. The first issue is whether the court had personal jurisdiction over her sufficient to determine that the real property gifted to her was encumbered by the life estate interest subject to the Department's claim. The second issue is whether the court could order her to sell the property in order to satisfy the Department's allowed claim against the estate. The first issue was necessarily

⁴POMS SI 01140.120.

decided as part of the court's June 12, 2008, order and is no longer subject to challenge. It is established in this case that the real property remains subject to a life estate interest which is an asset subject to the Department's claim.⁵ The second issue is discussed here.

A. The Real Property Subject to the Department's Claim Is in the Possession of the Personal Representative.

It is without dispute that the personal representative is in possession of the real property gifted to her. *See* Exhibit "A" to Petition to Require Payment of Claim. An estate is not a legal entity, natural or artificial person "but merely [a] name to indicate [the] sum total of assets and liabilities of decedent." Town of Trumbull v. Palmer, 104 Conn.App. 498, 502, 934 A.2d 323, 328 (App. 2007); *see also* In re Peterson, 156 Cal.App.4th 676, 679, 67 Cal.Rptr.3d 584, 586, fn. 1 (Cal.App. 5 Dist. 2007) ("A probate or trust estate is not a legal entity; it is simply a collection of assets and liabilities"). An estate does not own real property. *Id.* In this case, the property is personally owned by the personal representative, subject to the life estate interest, and is within her power and control.

B. The Personal Representative Is a Fiduciary Who Has a Duty to Take Possession of the Assets of the Estate.

The personal representative seeks to divide herself, and claims that she exists as a personal representative separately from her existence as an individual. Such a divided person doesn't exist even in the hypothetical world. Instead, the personal representative is a single person who is also a fiduciary and a trustee. *See* Idaho Code § 15-1-201(18). As a fiduciary and

⁵This issue is discussed in the Appendix in the event the court determines that the June 12, 2008, order was not a final, appealable, order.

trustee, she is obligated to use her powers in the best interest of the successors of the estate, including the Department:

15-3-711. Powers of personal representatives—In general – Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

Idaho Code § 15-3-711; *see also* Idaho Code § 15-3-703 (“A personal representative is a fiduciary who shall observe the standards of care applicable to trustees”). She has the duty to take possession of the assets of the estate:

15-3-709. Duty of personal representative— Possession of estate – Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property . . . The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration . . . He may maintain an action to recover possession of property or to determine the title thereto.

Idaho Code § 15-3-709 (underline added). If the life estate interest weren't already part of the real property in her possession, and over which she has control, she could be required to obtain possession of it through any necessary legal process.

C. The Personal Representative Has Authority to Partition and to Sell Real Property and the Court Can Require Her to Fulfill Her Duty.

A personal representative has authority to partition or sell real property. Idaho Code § 15-3-715(6). The court has authority to enter orders to secure proper performance of a personal representative's duties. Idaho Code §§ 15-3-607; 15-3-105. In its August 11, 2009, order, the court required the personal representative to take several steps to sell the real property and satisfy the Department's claim. The court also ordered:

IT IS FINALLY ORDERED that upon the failure of the Personal Representative to comply with this Order, she may be subject to removal and a successor personal representative may be appointed in her place and stead, or such other judicial remedy as may be appropriate.

Order Granting Petition to Compel, p. 2. If a successor personal representative were appointed, there is no question but that he would have authority to bring an action against Cathie Peterson, the current personal representative, for partition of the real property. This would necessarily involve the sale and division of the assets of the estate, just as the magistrate ordered here.

Since, at present, the personal representative is in possession of the real property, there is no need for her to sue herself to acquire possession and control. She already has it. Her argument has nothing to do with any legal inability, but rather has to do with her personal interest in keeping the real property, including the life estate interest, for herself.

V.

**THE DEPARTMENT SHOULD BE AWARDED ITS
ATTORNEY FEES ON APPEAL PURSUANT TO IDAHO
CODE § 12-117.**

Idaho Code § 12-117 provides, in part, as follows:

12-117. Attorney's Fees, Witness Fees and Expenses Awarded in Certain Instances. – (1) Unless otherwise provided by statute, in any administrative or civil judicial proceeding involving as adverse parties a state agency, a city, a county or other taxing district and a person, the court shall award the prevailing party reasonable attorney's fees, witness fees and reasonable expenses, if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law.

Idaho Code § 12-117(1) (underline added). The personal representative has acted, and has failed to act, without any reasonable basis in fact or law. She continues to resist complying with the June 12, 2008, order which was never appealed. There is no reasonable basis for this appeal.

The personal representative complains about an absence of findings of fact when she herself failed to object to any of the facts presented and failed to place any fact into issue. Likewise, the personal representative complains about the use of the Department's life estate tables, but failed herself to offer any reasonable alternative, and instead continues to simply drag her feet to avoid paying the Department's claim. Finally, the personal representative makes an argument, that lacks any legal basis, regarding her inability to partition and sell property which is in her possession. The Department should be awarded its attorney fees on appeal.

CONCLUSION

The personal representative did not appeal the June 12, 2008, order which established the availability of the life estate interest and required her to pay the Department's claim. Instead, after the Department was forced to bring a petition asking the court to compel her to act, she now wishes to go back to "square one." Her failure to comply with the court's June 12, 2008, order does not create a new right to appeal. The issues correctly before the court are insubstantial and evaporate away under scrutiny. The order appealed from is correct in every way.

VI.

APPENDIX

A. The Life Estate Is an Asset Subject to Estate Recovery.

In 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993, commonly referred to as OBRA '93. This act, codified primarily in 42 U.S.C. § 1396p, contained a number of provisions intended to enhance Medicaid estate recovery, including strict restrictions on transfers to trusts and an expanded definition of estate. These changes were made to assure recovery of property that would otherwise pass outside of probate and, therefore might be lost to estate recovery. Idaho adopted the expanded definition of estate effective July 1, 1995. It is found in Idaho Code § 56-218(4):

(4) For purposes of this section, the term "estate" shall include:

(a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; **and**

(b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.⁶

Idaho Code § 56-218(4) (emphasis added). Therefore, for purposes of estate recovery, the estate subject to the Department's claim includes a retained life estate held by a Medicaid recipient or his spouse at time of death.

This, of course, is contrary to common law. At common law, a life estate terminated and the interest passed to the remainderman upon the death of the holder. Where, as here, the life estate passes an interest in property to a survivor or heir, Idaho Code § 56-218(4)(b) abrogates

⁶This language is taken word for word from 42 U.S.C. § 1396p(b)(4)(B).

common law to the extent necessary to preserve the life estate interest for estate recovery. Oregon has an estate recovery law very similar to Idaho's (indeed it is likely that Idaho's original estate recovery law was copied from Oregon). Oregon has also adopted the expanded definition of estate for purposes of estate recovery. In the case of State Dept. of Human Services v. Willingham, 206 Or.App. 156, 136 P.3d 66 (2006) (copy attached), Oregon brought an action to recover the value of a life estate of a deceased Medicaid recipient where, like here, the property had been conveyed to the son of the Medicaid recipient, retaining a life estate. The facts are nearly identical to those here. In the Willingham case, however, the life estate had been created in 1993 before the 1995 adoption of the expanded definition of estate. The Medicaid payments had been made after the adoption of the new law. Therefore, the primary issue was whether the 1995 law would be applied to the 1993 life estate.⁷ The Oregon Court of Appeals examined the legal effect of the expanded definition of estate and its application to life estates and concluded that the law abrogated the common law, and the life estate interest was preserved after death for purposes of estate recovery:

Based on that change in the law in 1995, we agree with the state that the legal effect of the legislature's amendment was to modify the common law rule that a life estate interest is extinguished under the circumstances established by the statute. For purposes of the recovery of medical assistance paid by the state during the lifetime of the holder of a life estate interest, the life estate continues to exist after the death of the person holding the interest.

Willingham, 206 Or.App. at 160, 136 P.3d at 68 (underline added); *see also* Bonta v. Burke, 98 Cal.App.4th 788, 120 Cal.Rptr.2d 72 (2002) (where the Medicaid recipient mother had retained a life estate and a right to revoke the remainder, the life estate was not extinguished on her death,

⁷This issue is not present here. The life estate in this case was created December 6, 2001, well after the July 1, 1995, effective date of Idaho's law.

but rather was an asset of the estate for purposes of estate recovery); In re Estate of Laughead, 696 N.W.2d 312 (Iowa 2005) (life estate in farm owned by deceased Medicaid recipient was required to be included in the estate for purposes of estate recovery) (copies of these cases are attached).

All of these cases consistently construe the language of 42 U.S.C. § 1396p(b)(4)(B) which was adopted by each state, including Idaho.

B. The Value of the Life Estate Is Determined at the Moment Before Death.

The personal representative seems to argue that the life estate has no value because it is extinguished at death. However, as shown by the cases cited above, the value of the life estate is determined the moment before death, not after. This issue was specifically addressed in the case of In re Estate of Laughead, *supra*:

Whether Ruby, “at the time of her death,” had an interest in the real property at issue here is determined as of a point in time immediately before her death. *See In re Barkema Trust*, 690 N.W.2d 50, 56 (Iowa 2004) (holding “the phrase ‘at the time of death’ means the time immediately before the Medicaid recipient’s death”). Immediately prior to her death, Ruby held a life estate in 338 acres of land. For reasons that follow, we hold her life estate constituted an interest in real property within the meaning of section 249A.5(2)(c).

In re Estate of Laughead, 696 N.W.2d at 316. Any other interpretation would make the life estate language in Idaho Code § 56-218(4)(b) a nullity. The court, of course, will not give a statute an interpretation which would render it a nullity. State v. Beard, 135 Idaho 641, 646, 22 P.3d 116, 121 (App. 2001). The purpose of the expanded definition of estate is met by recognizing the value of the property at the moment before the death of the Medicaid recipient.

C. The Personal Representative Has Submitted Herself to the Personal Jurisdiction of the Court.

In her fourth issue on appeal, the personal representative argues that “[t]he Magistrate does not have jurisdiction over real property vested in a person not a party to the proceeding (Cathie Peterson in her individual capacity)” Again however, as discussed above, the estate is not a legal entity and Cathie Peterson is only a single person, not two. She is an individual who has a fiduciary duty in holding and managing property within her possession and control. The court has jurisdiction over her personally, and over the real property interest at issue here.

No one forced Cathie Peterson to serve as personal representative in this case. She voluntarily petitioned for appointment. By doing so, she submitted herself to the personal jurisdiction of the court:

15-3-602. Acceptance of appointment--Consent to jurisdiction – By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

Idaho Code § 15-3-602 (underline added). The Department, as a creditor of the estate with an allowed claim, is an “interested person.” Idaho Code § 15-1-201(25). Therefore, the Department’s petitions in this matter, properly served upon the personal representative, were sufficient for the court to have jurisdiction over Cathie Peterson. Contrary to her arguments, Cathie Peterson was a party to all of these proceedings.

The magistrate court has exclusive jurisdiction over these probate proceedings:

15-3-105. Proceedings affecting devolution and administration–
Jurisdiction of subject matter – Persons interested in decedents' estates may

apply to the registrar for determination in the informal proceedings provided in this chapter, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this chapter. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended and distributed.

Idaho Code § 15-3-105 (underline added). Even if Cathie Peterson could somehow divide herself and claim that she must be served individually, the notices she received were sufficient under the probate code:

15-3-106. Civil litigation--Notice – Subject to general rules concerning the proper location of civil litigation and jurisdiction of persons, the court may herein determine any other controversy concerning a succession or to which an estate, through a personal representative, may be a party. Persons notified are bound though less than all interested persons may have been given notice.

Idaho Code § 15-3-106 (underline added). There is no question concerning the magistrate court's jurisdiction over the personal representative, whether personally, or in her capacity as personal representative of this estate.

DATED this 10 day of December, 2009,




W. COREY CARTWRIGHT
Deputy Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing document was mailed, postage pre-paid, to the following:

JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorneys at Law
Old Power House Building
120 East Lake Street, Suite 317
Sandpoint ID 83864

DATED this 10 day of December, 2009.



STACEY GENTA, Paralegal
Division of Human Services

Slip Copy, 352 Mont. 550, 2009 WL 2217535 (Mont.), 2009 MT 240N
 (Table, Text in WESTLAW), Unpublished Disposition
 (Cite as: 2009 WL 2217535 (Mont.))

NOTE: THIS OPINION WILL NOT BE PUBLISHED IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE. See MT R S C T I O R 1 and MT R Opinion Forms & Cite STDS Opinion Forms and Citations.

Supreme Court of Montana.
 In the Matter of the ESTATE OF Larry Gordon
 BURTON, Deceased.
 Sylvia Geshell, Removed Personal Representative
 of the Estate of Larry Gordon Burton, Appellant,
 v.
 Diana Vanek, Substituted Personal Representative
 of the Estate of Larry Gordon Burton, Appellee.
No. DA 08-0467.

Submitted on Briefs June 25, 2009.
 Decided July 21, 2009.

APPEAL FROM: District Court of the Fourth Judicial District, In and For the County of Missoula, Cause No. DP-04-127, Honorable John W. Larson, Presiding Judge.

For Appellant: Harold V. Dye, Nancy K. Moe; Dye & Moe, P.L.L.P., Missoula, Montana.

For Appellee: P. Mars Scott, Kerry N. Newcomer; P. Mars Scott Law Offices Missoula, Montana.

Chief Justice MIKE McGRATH delivered the Opinion of the Court.

*1 ¶ 1 Pursuant to Section I, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶ 2 Sylvia Geshell (Geshell) appeals from orders of the Fourth Judicial District Court, Missoula County, relating to the administration of the Estate of Larry Gordon Burton (Burton). We affirm.

¶ 3 Geshell presents the following issues on appeal:

¶ 4 Whether the District Court was correct in concluding that Geshell waived her right to appeal a September 30, 2005 order distributing a portion of the estate.

¶ 5 Whether the District Court's findings of fact were clearly erroneous.

¶ 6 Whether the District Court erred by appointing Diana Vanek (Vanek) personal representative in preference to those having other priority.

¶ 7 Whether the District Court abused its discretion in awarding Vanek attorney fees.

¶ 8 Burton died testate on August 14, 2004. Geshell, Burton's ex-wife and business partner in Creative Arts, was appointed personal representative of the Estate on August 20, 2004. Burton's last will and testament made the following devise, among others, to Vanek, his domestic partner: "I also request [Vanek] be allowed to live at my Rattlesnake home free of any rent for as long as she chooses to do so, or until she remarries." On September 3, 2004, Vanek filed a claim against the Estate asserting her status as a creditor and recipient under the will of a rent-free life estate in the Rattlesnake home, along with a notice of lis pendens on the property. On September 14, 2004, Geshell filed a motion for approval of sale of real estate free of lis pendens, to which Vanek objected.

¶ 9 On December 17, 2004, following a hearing, the court held that the interest granted Vanek became a financial interest and allowed the sale of the Rattlesnake residence. Vanek amended her claim against the Estate accordingly, but Geshell denied Vanek's claim. Vanek filed a petition for allowance,

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which the District Court granted on September 30, 2005, "to the extent that [Vanek] is entitled to distribution of \$129,679.00, as her financial interest in the specific devise that she be 'allowed to live at my Rattlesnake home free of any rent for as long as she chooses to do so, or until she remarries.'" Vanek filed her notice of entry of judgment on October 18, 2005.

¶ 10 On October 31, 2005, Geshell filed a motion for certification pursuant to M.R. Civ. P. 54(b) requesting that the District Court certify that *all* of Vanek's claims against the Estate were adjudicated within its September 30, 2005 order. Vanek objected to the certification motion on the grounds that Geshell failed to meet the burden of proof required by M.R. Civ. P. 54(b) and that the motion was untimely since other claims still required adjudication. On May 1, 2006, the District Court denied Geshell's request for certification. Over a year later, on May 15, 2007, Geshell moved to reconsider the September 30, 2005 order. The District Court denied Geshell's request on August 21, 2007, concluding that Geshell failed to act to set aside the judgment within a reasonable time.

*2 ¶ 11 On April 8, 2008, Vanek filed a petition for supervised administration arguing that Geshell had wrongfully administered the Estate such that Vanek's devises could not be satisfied and requesting that Geshell be removed as personal representative. On May 20, 2008, Geshell filed the final account, petition for determination of testacy, for determination of heirs, and for settlement and distribution of a testate estate by personal representative. Geshell's inventory stated that Creative Arts and Burton's photography collection, which had been devised to her, had no value. Geshell's final account did not include payment of the financial interest to Vanek. Geshell also had paid \$120,000 of Creative Arts' debts with Estate money, claiming that the money taken was a loan, although no written note or security instrument were provided to assure repayment. On July 7, 2008, the District Court conducted a hearing on pending petitions, in which

both Geshell and Vanek testified. The District Court issued lengthy findings of fact, conclusions of law and an order on August 27, 2008. Geshell was removed as personal representative for wrongfully administering the Estate and Vanek was inserted in her place.

¶ 12 Geshell's appeal of the September 30, 2005 order to pay Vanek \$129,679 for the life estate is untimely under M.R.App. P. 1 (2005). A party in a civil case may appeal from a judgment or order "refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share...." M.R.App. P. 1(b)(3) (2005). M.R.App. P. 5(a)(1) (2005) requires that a civil appeal be filed within 30 days from entry of judgment. Geshell failed to appeal the September 30, 2005 order within 30 days of Vanek filing her entry of judgment on October 18, 2005. Thus, we conclude that Geshell waived her right to appeal the District Court's decision to grant Vanek \$129,679 as her financial interest in lieu of the life estate.

¶ 13 Turning to the District Court's August 27, 2008 findings of fact, a finding is "clearly erroneous" if it is not supported by substantial evidence, if the trial court misapprehended the effect of the evidence, or if review of the record convinces this Court that the district court made a mistake. *In re Estate of McDermott*, 2002 MT 164, ¶ 22, 310 Mont. 435, 51 P.3d 486. Geshell argues that various findings are unsupported by evidence in the record. However, Geshell limits her argument to testimony presented at the July 7, 2008 hearing and thereby ignores previous hearings, argument, testimony, and extensive briefing in the almost four years prior to that hearing. Our review of the record does not convince us that the District Court's findings of fact were clearly erroneous.

¶ 14 Geshell argues that the District Court erred by appointing Vanek personal representative in preference to family members that Burton listed in his will as alternate executors. We review a district court's conclusions of law to determine whether

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they are correct. *Estate of McDermott*, ¶ 22. Nothing in the record indicates that Burton's alternate executors were willing or able to act as personal representative, had any stake in the administration of the Estate, or were informed of the current status of the Estate. As noted above, the court had the benefit of an extensive record, and we find no reason to conclude that the District Court was incorrect by appointing Vanek personal representative.

*3 ¶ 15 Finally, Geshell argues that the District Court erred in awarding Vanek attorney fees since she was not personal representative at the time she incurred the fees. We review a district court's grant of attorney fees for abuse of discretion. *In re Marriage of Gorton and Robbins*, 2008 MT 123, ¶ 45, 342 Mont. 537, 182 P.3d 746. The District Court determined that Geshell breached her fiduciary duty to Vanek by failing to fairly value all Estate property, failing to abate devises in order of statutory priority, by taking cash from the Estate, and by failing to distribute money and property devised to Vanek. Vanek incurred attorney fees as a result of Geshell's wrongful conduct, and by substituting Vanek for Geshell as personal representative, the District Court ordered recovery of Vanek's attorney fees. The District Court did not abuse its discretion in awarding Vanek her attorney fees as allowed by § 72-3-632, MCA.

¶ 16 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum opinions. It is manifest on the face of the briefs and the record that the appeal is without merit because the issues are clearly controlled by settled Montana law; the issues are factual and there clearly is sufficient evidence to support the findings of fact below; and the issues are ones of judicial discretion and there clearly was not an abuse of discretion.

¶ 17 Affirmed.

We concur: JOHN WARNER, W. WILLIAM LEAPHART, JIM RICE, and JAMES C. NELSON.

Mont.,2009.

In re Estate of Burton

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H

Court of Appeals of Oregon.

STATE of Oregon, acting by and through the DEPARTMENT OF HUMAN SERVICES, Appellant,
v.

Jack WILLINGHAM, Respondent.

0308-08747; A126258.

Argued and Submitted Jan. 18, 2006.

Decided May 31, 2006.

Background: State filed complaint against deceased father's son for recovery of medical assistance paid to father during father's lifetime. Complaint alleged that father had transferred real property to son while reserving a life estate. The Circuit Court, Multnomah County, Michael C. Zusman, J. Pro Tem., granted summary judgment to son, and State appealed.

Holding: The Court of Appeals, Edmonds, P.J., held that amendment to statute governing recovery of medical assistance paid by State during lifetime of holder of life estate interest was intended to reach life estates created before time of amendment.

Reversed and remanded.

West Headnotes

[1] Health 198H ⚡456

198H Health

198HIII Government Assistance

198HIII(A) In General

198Hk452 Constitutional and Statutory Provisions

198Hk456 k. Retroactive Operation.

Most Cited Cases

Amendment to statute governing recovery of medical assistance paid by State during lifetime of holder of life estate interest was intended to reach life estates created before the time of the amendment;

the fact that statute and its legislative history made no distinction as to when the property interests were created was persuasive evidence that the legislature intended that statute, as amended, to apply to all life estates. West's Or.Rev. Stat. Ann. § 414.105.

[2] Statutes 361 ⚡188

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k188 k. In General. Most Cited

Cases

Statutes 361 ⚡208

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic

Aids to Construction

361k208 k. Context and Related

Clauses. Most Cited Cases

Courts ascertain the intention of the legislature underlying a statute by first considering the text and context of the language used in the statute.

[3] Statutes 361 ⚡278.5

361 Statutes

361VI Construction and Operation

361VI(D) Retroactivity

361k278.4 Prospective Construction

361k278.5 k. In General. Most Cited

Cases

(Formerly 361k263)

Generally, legislation is to be applied prospectively unless it appears that the legislature intended to enact retroactive legislation.

[4] Statutes 361 ⚡278.2

361 Statutes

361VI Construction and Operation

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361VI(D) Retroactivity

361k278.2 k. Nature and Scope. Most Cited Cases

(Formerly 92k188)

A retroactive legislative action is one that affects existing legal rights or obligations arising out of past transactions or occurrences.

[5] Statutes 361 ↪ 278.5

361 Statutes

361VI Construction and Operation

361VI(D) Retroactivity

361k278.4 Prospective Construction

361k278.5 k. In General. Most Cited

Cases

(Formerly 361k263)

In determining whether a statute applies retroactively, the court will look first to text and context and, in the absence of an express retroactivity clause, it will consider such textual cues as verb tense and other grammatical choices that might suggest what the legislature had in mind.

[6] Statutes 361 ↪ 278.7

361 Statutes

361VI Construction and Operation

361VI(D) Retroactivity

361k278.7 k. Express Retroactive Provisions. Most Cited Cases

(Formerly 361k262)

In determining whether a statute applies retroactively, the court will inquire whether the legislature included any express retroactive application provisions elsewhere in the same bill, because the failure to include such a provision in one part of a bill but not another may be an indicator of what it intended.

[7] Administrative Law and Procedure 15A ↪ 419

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules and Regulations

15Ak416 Effect

15Ak419 k. Retroactivity. Most Cited

Cases

An agency is permitted to apply a rule retroactively if that is the agency's intent in enacting the rule.

[8] Administrative Law and Procedure 15A ↪ 412.1

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules and Regulations

15Ak412 Construction

15Ak412.1 k. In General. Most Cited

Cases

In order to ascertain an agency's intent in promulgating the rule, courts first examine the text and context of the rule in question.

[9] Health 198H ↪ 508

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General; Medicaid

198Hk506 Judicial Review; Actions

198Hk508 k. Preservation of Issue in General. Most Cited Cases

Court of Appeals would decline to review an "as applied" constitutional challenge to statute governing recovery of medical assistance paid by State during lifetime of holder of life estate interest, where trial court did not consider or rule on the factual predicates to such a challenge.

****67** Jas. Jeffrey Adams, Assistant Attorney General, argued the cause for appellant. With him on the briefs were Hardy Myers, Attorney General, and Mary H. Williams, Solicitor General.

William T. Powers, Portland, argued the cause and filed the brief for respondent.

Before EDMONDS, Presiding Judge, and LINDER and WOLLHEIM, Judges.

EDMONDS, P.J.

*158 The state appeals from a grant of summary judgment under ORCP 47 to defendant on the state's claim to recover medical assistance paid to defendant's father during his lifetime. ORS 414.105 . We reverse.

The facts relevant to this appeal are not in dispute. In 1993, Jack Willingham transferred certain real property to his son, defendant, reserving a life estate. In 1997, he applied for medical assistance from the state, which he received until his death in 2002. Thereafter, the state, on behalf of the Department of Human Services (DHS), filed a complaint against defendant for recovery of the medical assistance paid to the decedent under ORS 414.105 and OAR 461-135-0845 and alleged that "[a]s recipient of the Property, defendant is liable to plaintiff to the extent of Decedent's interest in the Property." In response, defendant filed an answer denying that the property that he received from his father was subject to the state's claim. Eventually, the trial court ruled that the property was not subject to ORS 414.105 because the legislature did not intend the statute to apply to life estates created before the effective date of the 1995 amendment to the statute and granted summary judgment to defendant.

[1] On appeal, the state argues that the amendment of ORS 414.105 in 1995 abrogated the common-law rule that a life estate is extinguished at the moment of death for purposes of recovering medical assistance payments from the estate of a recipient. Because all of the assistance was paid to defendant's father after the statute was amended, the state contends that it is entitled to apply the statute prospectively to recover the amounts that it paid to defendant's father from the value of his life estate as it existed at the moment before his death. It posits that the fact "that defendant may receive less upon [his father's] death than anticipated is a function of the value of the life estate, not a result of inclusion of the remainder interest in the estate."

Defendant disagrees that the state seeks to apply ORS 414.105 prospectively. He reasons that because he acquired his remainder interest in 1993, before the statute *159 was amended, any application of the statute to the property is retroactive in nature, something that the legislature did not intend. Alternatively, if the statute does reach the property, then, according to defendant, such an application would constitute an unconstitutional retroactive impairment of the contract that he had with his father to receive the remainder interest and an unconstitutional taking of it. Under all of those circumstances, he concludes that the legislature could not have intended that ORS 414.105 be applied to the property that he now owns.

[2] In light of the parties' arguments, we turn to the language of the governing statute as it existed after 1995 and between 1997 and 2002 when the state made payments to defendant's father.^{FN1} ORS 414.105 provides:

FN1. The statute was also amended in 2001. Those amendments do not affect the outcome of this case.

"(1) The Department of Human Services may recover from any person the amounts of medical assistance incorrectly paid on behalf of such person.

"(2) Medical assistance pursuant to this chapter paid on behalf of an individual who **68 was 55 years of age or older when the individual received such assistance * * * may be recovered from the estate of the individual or from any recipient of property or other assets held by the individual at the time of death including the estate of the surviving spouse. Claim for such medical assistance correctly paid to the individual may be established against the estate, but there shall be no adjustment or recovery thereof until after the death of the surviving spouse, if any, and only at a time when the individual has no surviving child who is under 21 years of age or who is blind or permanently and totally disabled. Transfers of

real or personal property by recipients of such aid without adequate consideration are voidable and may be set aside under ORS 411.620(2).

“(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

“(4) In any action or proceeding under this section to recover medical assistance paid, it shall be the legal burden *160 of the person who receives the property or other assets from a Medicaid recipient to establish the extent and value of the Medicaid recipient's legal title or interest in the property or assets in accordance with rules established by the department.

“(5) As used in this section, ‘estate’ includes all real and personal property and other assets in which the deceased individual had any legal title or interest at the time of death including assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other similar arrangement.”

The issue framed by the parties on appeal—whether the statute applies to a life estate created in 1993—presents an issue of statutory interpretation. We ascertain the intention of the legislature underlying a statute by first considering the text and context of the language used in the statute. Part of the context of a statute are prior versions of the statute. *State ex rel Penn v. Norblad*, 323 Or. 464, 467, 918 P.2d 426 (1996). In amending ORS 414.505 in 1995, the legislature added subsection (5) to the statute. Before that amendment, the state could charge the estate of the surviving spouse even though the decedent's interest had passed at the time of death by right of survivorship. ORS 414.105(2) (1993). However, the 1993 version of the statute made no reference to life estates. Thus, it is apparent that the legislature intended by its 1995 amendment to reach other kinds of property in-

terests under the statute that had not been previously subject to it. Based on that change in the law in 1995, we agree with the state that the legal effect of the legislature's amendment was to modify the common law rule that a life estate interest is extinguished under the circumstances established by the statute. For purposes of the recovery of medical assistance paid by the state during the lifetime of the holder of a life estate interest, the life estate continues to exist after the death of the person holding the interest.

[3][4] The next question is whether the legislature, by amending the statute in 1995, intended to reach life estates that had been created before that time. Generally, legislation is to be applied prospectively unless it appears that the legislature intended to enact retroactive legislation. *161 *Fromme v. Fred Meyer, Inc.*, 306 Or. 558, 561, 761 P.2d 515 (1988). A retroactive legislative action is one that affects existing legal rights or obligations arising out of past transactions or occurrences. *U.S. Bancorp v. Dept. of Rev.*, 337 Or. 625, 637, 103 P.3d 85 (2004) (application of 1995 tax regulation on taxpayer for actions taken in 1988-1992 constituted retroactive application of the regulation, since taxpayer was entitled to presume that its tax for those years would be based upon apportionment formula in 1987 regulation); *see also Whipple v. Howser*, 291 Or. 475, 488-89, 632 P.2d 782 (1981) (Linde, J., concurring) (“ ‘Retroactivity’ itself is a deceptively simple word for a complex set of problems. In real time, all laws can operate only prospectively, prescribing legal consequences after their enactment; they cannot change the past. On the other hand, all new laws operate upon a **69 state of affairs formed to some extent by past events.”).

As in many cases, it is not particularly helpful to the analysis in this case to label the 1995 amendment as “retroactive” or “prospective” in application. Indeed, the 1995 amendment becomes “retroactive” in application if the focus of the analysis is on when the life estate is created, but prospective in its application if the focus is on when

the state made its payments to the recipient. Rather, we believe the more appropriate analysis is to disregard labels and to discern the legislature's intent regarding whether it intended the statute to apply to life estates that were created before the amendment.

[5][6] "Specifically, we look first to text and context and, in the absence of an express retroactivity clause, we consider such textual cues as verb tense and other grammatical choices that might suggest what the legislature had in mind." *State ex rel Juv. Dept. v. Nicholls*, 192 Or.App. 604, 609, 87 P.3d 680 (2004). We also inquire whether the legislature included any express retroactive application provisions elsewhere in the same bill, because the failure to include such a provision in one part of a bill but not another may be an indicator of what it intended. Here, there are no express provisions in the bill that amended ORS 414.105 in 1995 that inform the question of whether the amendment applied to 1993 transactions. However, the 1995 amendment included another change to the statute that does suggest an answer to *162 whether the legislature intended the statute to apply to life estates that were created before the amendment.

Before the 1995 amendment, subsection (2) of the statute provided, in part,

"Medical assistance pursuant to ORS 411.405 and this chapter paid on behalf of an individual who was 65 years of age or older when the individual received such assistance may be recovered from the estate, or if there be no estate the estate of the surviving spouse, if any, shall be charged for such aid paid to either or both."

The 1995 amendment changed subsection (2) of the statute to provide,

"Medical assistance pursuant to ORS 411.405 and this chapter paid on behalf of an individual who was 55 years of age or older when the individual received such assistance may be recovered from the estate of the individual or from any recipient of property or other assets held by the individual at the time of death including the estate

of the surviving spouse."

In promulgating the 1995 amendment, the legislature included within the scope of the statute additional property interests-life estates-that had not been included before, and it lowered the age of the recipients of payments of medical assistance affected by the statute from age 65 to age 55. At the same time, the statute, as amended, continued to focus on when the assistance payments were received rather than when the property interests made subject to the statute were created. That focus, together with the changes made as a result of the 1995 amendment, suggest that all life estates were intended to be subject to ORS 414.105 in the event that their owners received assistance payments, regardless of when they were created.

If the text and context of a statute are inconclusive regarding a question of legislative intent, as they are here, we next consider the legislature history underlying the statute. Our review of legislative history of the 1995 amendment does not reveal that the legislature expressly discussed at that time whether life estates created before the adoption of the amendment would be subject to the statute. Rather, the legislature added the word "life estate" and changed the age *163 from 65 years to 55 years to make the statute consistent with federal law, as required by federal law in order to receive federal funding. *See* 42 USC § 1396(a)(18) and 42 USC § 1396p(4)(B). Anita Leach, assistant administrator for the Senior and Disabled Services Division of what is now DHS offered the primary testimony regarding the proposed bill that eventually became the 1995 amendment to ORS 414.105. She testified,

"House Bill 2067 changes the Estate Recovery Law by which persons who receive financial assistance through federal Medicaid**70 funding repay a part of that assistance from their estates. The change lowers the age at which the state can begin counting the amount to be collected from 65 to 55 years.

"The reason for the change is a modification in fed-

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eral law. In 1993 Congress made changes to the federal Medicaid Estate Recovery Law lowering the age to 55 years. Although this law took effect in October 1993, we have had permission from the federal Department of Health and Human Services to delay implementation until our state law is changed.

"The estate collection process works as follows: When a person dies after receiving financial assistance for medical or long term care services—those services Oregon finances with Medicaid funds—the State of Oregon files a claim against their estate. This claim must wait until the death of a surviving spouse or a disabled child. Currently we can collect for services provided to persons 65 years of age or older. The law change—consistent with the federal ruling—would allow recovery of costs of services provided for persons 55 years of age or older. Collections will be small initially because persons who seek or who are receiving assistance must be notified of our intent to file a claim against their estates. *Collections will not be made on the portion of services paid prior to the notice.*"

Testimony, House Committee on Human Resources and Education, Subcommittee on Human Resources, HB 2067, Mar. 13, 1995, Ex. J (statement of Anita Leach, Assistant Administrator, Senior and Disabled Services Division) (emphasis supplied).

***164** Although the above legislative history does not expressly address whether the 1995 amendment was intended to apply to the creation of life estates before its enactment, the implications from the above testimony inform that issue. The testimony demonstrates that, to the extent the legislature was concerned with the temporal scope of the provision, that concern related to when financial assistance was provided and not to when a life estate or other property interest governed by the statute was created. In light of that testimony, the fact that the statute and the legislative history underlying it make no distinction as to when the property interests are created is persuasive evidence that the legislature in-

tended ORS 414.105, as amended, to apply to all life estates.

[7][8] In addition, defendant argues that, because DHS's rule, OAR 461-135-0845, valued the decedent's life estate as zero until the 2000 amendment, it is inapplicable to the benefits paid to his father before February 2000. Effective August 28, 1996, OAR 461-135-0845 provided:

"(1) Effective July 18, 1995, a Life Estate or other Interest in Real or Personal Property or an Asset measured by or valued with respect to a life span (other than the life span of the relevant recipient of state assistance) shall be presumptively established by reference to the tables as set forth at 26 CFR 20.2031-7 in the Code of Federal Regulations and in effect on June 1, 1996, and shall be valued as of the Time of Death of the recipient of state assistance irrespective of actual life span of the measuring life. The value of a Life Estate owned by the relevant recipient of state assistance and measured by such recipient's life span shall be zero at the Time of Death of the recipient."

The current version of the rule, as amended effective February 1, 2000, and in effect at the time of decedent's death, provides:

"(1) Effective July 18, 1995, the value of an expressly created life estate or other interest in real or personal property or other asset measured by or valued with respect to a life span, including that of the relevant recipient of public assistance, is established by reference to the life estate valuation tables set forth in this rule and is valued as of the ***165** time of death of the recipient of public assistance irrespective of the actual life span of the measuring life."

An agency is permitted to apply a rule retroactively if that is the agency's intent in enacting the rule. *May Trucking Co. v. Dept. of Transportation*, 203 Or.App. 564, 573, 126 P.3d 695 (2006). In order to ascertain the agency's intent in promulgating the rule, we first examine the text and context of the

rule in question. **71*id.* at 574, 126 P.3d 695. Here, the rule expressly states that it is “[e]ffective July 18, 1995.” Based on the express language of the current version of rule, there is no question that plaintiff intends the current rule to be enforced in a retroactive manner.

[9] Finally, defendant argues that our interpretation of the statute and the rule will result in an unconstitutional impairment of defendant's contract rights in violation of Article I, section 21, of the Oregon Constitution and an unlawful taking by the state under the Oregon and federal constitutions.^{FN2} We understand defendant to make an “as applied” constitutional challenge to ORS 414.105 rather than a facial challenge. Defendant argues that when his father irrevocably deeded the remainder interest in the property to him in 1993, he acquired and held a vested interest in the property at that precise moment that the state cannot constitutionally impair. To the extent that defendant made those arguments in the trial court, the trial court did not rule on them. Rather, it held that defendant was entitled to judgment “as a matter of law for the relief sought in the First Affirmative Defense[.]” That allegation alleges, in part, “Because this legislature did not evince an intent that ORS 414.105 be retroactive, this change should not apply to life estates transferred before that date[.]” Indeed, one of defendant's affirmative defenses that was not ruled on by the trial court challenges the state's evaluation of the value of the decedent's life estate based on his projected life span and the state of his physical health. *166 Under the circumstances, we decline to review an “as applied” challenge in this appeal from summary judgment when the trial court did not consider or rule on the factual predicates to such a challenge. Whether there is an unlawful “taking” of defendant's property or an elimination of a contractual obligation between defendant and his father will have to await a factual determination in the trial court.^{FN3} For all of the above reasons, the trial court erred in granting summary judgment to defendant.

FN2. Article I, section 21, of the Oregon Constitution, provides in relevant part: “No * * * law impairing the obligation of contracts shall ever be passed * * *.” An impairment of contract occurs under Article I, section 21, of the Oregon Constitution, when, by operation of law, there is an elimination of an obligation under which performance is required. *Eckles v. State of Oregon*, 306 Or. 380, 399, 760 P.2d 846 (1988), *appeal dismissed*, 490 U.S. 1032, 109 S.Ct. 1928, 104 L.Ed.2d 400 (1989).

FN3. We hasten to point out that the statute does not purport to apply to defendant's remainder interest. Indeed, as defined in the statute, the “estate” of his father consists only of the life estate that his father retained, not the remainder interest held by defendant. Moreover, the state on appeal appears to agree. In its brief, it states “defendant's remainder interest is not itself being subjected to reimbursement, but rather the reimbursement is based on the value of the life estate calculated immediately before the death of the decedent and included in the estate.”

Reversed and remanded.

Or.App.,2006.
State ex rel. Dept. of Human Services v. Willingham
206 Or.App. 156, 136 P.3d 66

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Supreme Court of Iowa.
In The Matter of The ESTATE OF Ruby LAUG-
HEAD, Deceased.
Health Management Systems, Inc., ex rel. Iowa De-
partment of Human Services, Appellee,
v.
Charles Laughead, Administrator of the Estate of
Ruby Laughead, Appellant.
No. 04-0065.

April 15, 2005.
Rehearing Denied May 12, 2005.

Background: Company acting on behalf of state Department of Human Services filed claim against estate to recover Medicaid benefits. The District Court, Monroe County, Daniel P. Wilson, J., ordered that estate pay claim up to value of decedent's life estate. Administrator of estate appealed.

Holdings: The Supreme Court, Ternus, J., held that:

- (1) recipient's estate was liable for benefits paid on recipient's behalf;
- (2) recipient's life estate in farm constituted an interest in real property under prior version of estate recovery statute;
- (3) recipient's life estate constituted a "retained life estate" under revised estate recovery statute;
- (4) Iowa probate law does not control determination of assets includable in recipient's estate for purposes of satisfying Medicaid debt; and
- (5) application of estate recovery statute did not unconstitutionally impair remainderman's vested interest.

Affirmed.

West Headnotes

[1] Health 198H 512(1)

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General;
Medicaid

198Hk506 Judicial Review; Actions

198Hk512 Scope of Judicial Review

198Hk512(1) k. In General. Most

Cited Cases

Supreme Court would review for correction of errors of law trial court's ruling in probate matter that estate was required to repay state for Medicaid benefits paid to recipient up to value of recipient's life estate in real property. I.C.A. § 249A.5, subd. 2.

[2] Health 198H 512(2)

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General;
Medicaid

198Hk506 Judicial Review; Actions

198Hk512 Scope of Judicial Review

198Hk512(2) k. De Novo Review.

Most Cited Cases

Supreme Court would review de novo trial court's decision that application of estate recovery statute concerning state's claim in probate matter for repayment of Medicaid benefits was not unconstitutional application that would impair administrator's contractual rights to property as remainder person. U.S.C.A. Const. Art. 1, § 10, cl. 1; Const. Art. 1, § 21; I.C.A. § 249A.5, subd. 2.

[3] Health 198H 494

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General;
Medicaid

198Hk490 Recovery Back or Recoupment
of Payments

198Hk494 k. Estate of Aid Recipient,
Recovery From. Most Cited Cases
Medicaid recipient's estate was liable for benefits

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paid on recipient's behalf, where state Department of Human Services paid recipient's medical and nursing-home bills. I.C.A. § 249A.5, subd. 2.

[4] Health 198H ⚡494

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General;
Medicaid

198Hk490 Recovery Back or Recoupment
of Payments

198Hk494 k. Estate of Aid Recipient,
Recovery From. Most Cited Cases

For purposes of statute defining estate of medical assistance recipient to include any real property in which recipient had any interest at time of recipient's death, whether recipient, "at the time of her death," had an interest in farm would be determined as of point in time immediately before her death. I.C.A. § 249A.5, subd. 2, par. c.

[5] Health 198H ⚡494

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General;
Medicaid

198Hk490 Recovery Back or Recoupment
of Payments

198Hk494 k. Estate of Aid Recipient,
Recovery From. Most Cited Cases

For purposes of statute defining estate of medical assistance recipient to include any real property in which recipient had any interest at time of recipient's death, recipient's life estate in farm constituted an interest in real property. I.C.A. § 249A.5, subd. 2, par. c.

[6] Life Estates 240 ⚡1

240 Life Estates

240k1 k. Nature and Incidents in General. Most
Cited Cases

Life estate is an interest distinct from and independent of the remainder.

[7] Health 198H ⚡494

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General;
Medicaid

198Hk490 Recovery Back or Recoupment
of Payments

198Hk494 k. Estate of Aid Recipient,
Recovery From. Most Cited Cases

Under statute requiring retained life estate to be included in Medicaid recipient's probate estate for purposes of repaying Medicaid benefits, recipient's life estate in farm constituted a "retained life estate"; life estate was created by recipient, and recipient held interest in farm at time she created life estate. I.C.A. § 249A.5, subd. 2, par. c.

[8] Health 198H ⚡494

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General;
Medicaid

198Hk490 Recovery Back or Recoupment
of Payments

198Hk494 k. Estate of Aid Recipient,
Recovery From. Most Cited Cases

Iowa probate law does not control the determination of assets includable in a recipient's estate for purposes of satisfying a Medicaid debt; general probate laws do not apply since there is specific law that addresses matter. I.C.A. §§ 4.7, 249A.5, subd. 2, pars. c, d, 633.3, subd. 15.

[9] Constitutional Law 92 ⚡2664

92 Constitutional Law

92XXII Obligation of Contract

92XXII(A) In General

92k2664 k. Application to Federal Laws
and Regulations. Most Cited Cases
(Formerly 92k154(1))

Constitutional Law 92 ⚡2671

92 Constitutional Law

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92XXII Obligation of Contract
92XXII(A) In General
92k2671 k. Existence and Extent of
Impairment. Most Cited Cases
(Formerly 92k154(1))

Health 198H 455

198H Health
198HIII Government Assistance
198HIII(A) In General
198Hk452 Constitutional and Statutory
Provisions
198Hk455 k. Validity. Most Cited
Cases

Application of estate recovery statute, which allows repayment of Medicaid benefits from recipient's estate when recipient had retained life estate, did not unconstitutionally impair remainderman's vested remainder interest in farm in probate proceeding concerning recipient's estate; state did not seek to reach remainder interest, and court did not order that value of remainder interest be included in recipient's estate. U.S.C.A. Const. Art. 1, § 10, cl. 1; Const. Art. 1, § 21; I.C.A. § 249A.5, subd. 2, par. c. *313 John A. Pabst of Pabst Law Firm, Albia, for appellant.

Thomas J. Miller, Attorney General, and Barbara E.B. Galloway, Assistant Attorney General, for appellee.

TERNUS, Justice.

This appeal concerns the scope of reimbursement authorized by Iowa Code section 249A.5(2) for payments made under the State's medical assistance or Medicaid program. The appellee, Health Management Systems, Inc., acting on behalf of the Iowa Department of Human Services, filed a claim in the Estate of Ruby Laughead to recover Medicaid payments made on behalf of Laughead in the years prior to her death. Over the objections of the appellant, Charles Laughead, Administrator of the Estate of Ruby Laughead, the district court included in the

probate estate a life estate held by Ruby Laughead immediately*314 prior to her demise, and ordered the administrator to pay the appellee's claim to the extent of the value of that life estate. Upon the administrator's appeal, we affirm.

I. Background Facts and Proceedings.

Prior to February 27, 1990, Ruby Laughead owned a 338-acre farm in Monroe County. On that date, she transferred this property to her son, Charles Laughead, by quitclaim deed, reserving only a life estate.

In 1995, the Iowa Department of Human Services (the department) began providing medical assistance to Ruby, primarily in the form of nursing home care, through Iowa's Medicaid program. *See generally In re Estate of Kirk*, 591 N.W.2d 630, 633 (Iowa 1999) ("Medicaid is a cooperative federal-state program designed to provide federal financial assistance to states that choose to reimburse certain costs of medical treatment for needy persons. It is the primary source of public assistance for the elderly who reside in nursing homes."). Annual income attributable to Ruby's life estate, less taxes and expenses, was also used to pay for Ruby's nursing home care.

Ruby died on July 29, 2002, and Charles was appointed the administrator of her estate. By the time of Ruby's death, the department had provided medical assistance to her in the amount of \$137,596.88. Consequently, Health Management Systems, Inc. filed a claim in Ruby's estate on behalf of the department to recover these payments. The administrator disallowed the claim, and the matter was set for hearing.

At the hearing held on the department's claim the parties stipulated that at the time of Ruby's death the farm in which Ruby held a life estate had a value of \$405,000, and Ruby's life estate interest in that property had a value of \$41,451.75.^{FNI} This life estate was the only potential source of payment

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for the department's claim. The administrator argued the department should not be able to reach Ruby's life estate because at the time the life estate was created Iowa law did not require Medicaid reimbursement. Alternatively, he contended that even if the estate recovery statute in effect when Ruby began receiving assistance applied, Iowa Code section 249A.5(2) (1995), it did not require that a recipient's life estate be included in the recipient's probate estate. Finally, the administrator asserted that to apply any version of the estate recovery statute would unconstitutionally impair his rights to the property as the remainder person. *See* U.S. Const. art. I, § 10; Iowa Const. art. I, § 21.

FN1. In stipulating to the value of the life estate, the parties asked the court to rely on two "life estate tables" that calculate the relative values of a life estate and a remainder interest in property based on the age of the life tenant. *Cf. In re Estate of Kirk*, 591 N.W.2d at 634-35 (valuing recipient's interest in joint tenancy property for purposes of Medicaid reimbursement in the same manner as required under Iowa's inheritance tax statute). One table is from the Iowa Department of Revenue and Finance and is used for purposes of determining taxable value. The other table is from the Department of Human Services' manual and is taken from the "unisex life estate or remainder table" found at 26 C.F.R. § 20.2031-7 (1994). Given the parties' stipulation, the proper valuation of Ruby's life estate is not an issue in this appeal.

The district court ruled that the statute in effect at the time of Ruby's death governed, and that applying the statute under the circumstances of this case was not an unconstitutional retroactive application. Therefore, the court held, Ruby's life estate was an asset of her probate estate, and the department's claim would be allowed to the extent of the value of that *315 asset. The court directed the administrator to place in the estate the amount of \$41,451.75,

plus interest, as provided in Iowa Code section 535.3 (2003). *See* Iowa Code § 249A.5(2)(e) (stating interest accrues on debt owed by Medicaid recipient at the rate provided in section 535.3 commencing six months after the recipient's death).

[1][2] The administrator appealed. We review the district court's ruling on this contested claim for correction of errors of law. *See* Iowa Code § 633.33 (2003). Our review of the court's decision on the administrator's constitutional claim is de novo. *See In re Estate of Beck*, 557 N.W.2d 270, 271 (Iowa 1996).

II. Statutory Framework.

At common law, the recipient of public assistance was not obligated to reimburse the State for payments made on the recipient's behalf. *See State ex rel. Dep't of Human Servs. v. Brooks*, 412 N.W.2d 613, 614 (Iowa 1987). The common law rule was modified with respect to Medicaid benefits in 1994 when Iowa adopted an estate recovery statute. *See* 1994 Iowa Acts ch. 1120, § 10 (codified at Iowa Code § 249A.5(2) (1995)). As originally enacted, section 249A.5(2) stated that the "provision of medical assistance ... creates a debt due the department [of human services] from the individual's estate for all medical assistance provided on the individual's behalf, upon the individual's death." Iowa Code § 249A.5(2) (1995). This statute also provided that the estate of a medical assistance recipient "includes any real property ... in which the recipient ... had any ... interest at the time of the recipient's ... death, to the extent of such interests, including but not limited to interests in jointly held property and interests in trusts." Iowa Code § 249A.5(2)(c). Moreover, these assets were made subject to probate. Iowa Code § 249A.5(2)(d). This statute was the law at the time Ruby began receiving Medicaid benefits in 1995.

Effective April 2002, the final clause of section 249A.5(2)(c) was amended to reach interests in real property "including but not limited to interests

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in jointly held property, *retained life estates*, and interests in trusts.” 2002 Iowa Acts ch. 1086, § 2 (emphasis added). “Retained life estate” was defined to include any of the following:

- a. A life estate created by the recipient or recipient's spouse, in which either the recipient or the recipient's spouse held any interest in the property at the time of the creation of the life estate.
- b. A life estate created for the benefit of the recipient or the recipient's spouse in property in which either the recipient or the recipient's spouse held any interest in the property within five years prior to the creation of the life estate.

Iowa Code § 249A.2(11) (2003). The amended version of section 249A.5(2)(c) was in effect at the time of Ruby's death.

III. *Is Ruby's Estate Liable for Medicaid Payments Made on Her Behalf?*

[3] As noted above, section 249A.5(2) provides that the “provision of medical assistance” to an individual creates a debt due the department for such assistance “from the individual's estate.” By the plain language of the statute, it is the receipt of benefits that gives rise to the repayment obligation. This statute was in effect when the department started paying Ruby's medical and nursing home bills, and it continued in effect to her death. Clearly, then, her estate is liable for the Medicaid benefits paid on her behalf. *See In re Estate of Thompson*, 586 N.W.2d 847, 852 (N.D.1998) (holding obligation to *316 repay medical assistance benefits arises when recipient receives benefits). The more troublesome question is what assets are includable in her estate for purposes of satisfying this debt. We turn to that question next.

IV. *Is Ruby's Life Estate Includable in Her Probate Estate For Purposes of Payment of the Debt Owed to the Department?*

The department contends that Ruby's life estate must be included in her probate estate under the original 1994 version of section 249A.5(2)(c) and under the amended 2002 version. The administrator argues that neither version can be constitutionally applied, and if they do apply, the original statute did not encompass life estates. The administrator's constitutional defense is addressed below. As for the question of which version of the statute controls or whether both apply, we need not decide that issue because we conclude that under either statute Ruby's life estate in the real estate transferred to Charles must be included in her probate estate.

[4][5] Section 249A.5(2)(c) as originally enacted defined the estate of a medical assistance recipient to include “any real property ... in which the recipient ... had any ... interest at the time of the recipient's ... death, to the extent of such interests, including but not limited to interests in jointly held property and interests in trusts.” Iowa Code § 249A.5(2)(c) (1995). Whether Ruby, “at the time of her death,” had an interest in the real property at issue here is determined as of a point in time immediately before her death. *See In re Barkema Trust*, 690 N.W.2d 50, 56 (Iowa 2004) (holding “the phrase ‘at the time of death’ means the time immediately before the Medicaid recipient's death”). Immediately prior to her death, Ruby held a life estate in 338 acres of land. For reasons that follow, we hold her life estate constituted an interest in real property within the meaning of section 249A.5(2)(c).

[6] When this court was called upon to interpret section 249A.5(2)(c) in *Barkema Trust*, we concluded “the legislature clearly intended to define ‘estate’ broadly, and to include more than legal title, because it defined [‘estate’] to include any ‘legal title or interest.’ ” *Id.* at 55 (quoting Iowa Code section 249A.5(2)(c) (2003)). Iowa law has long recognized a life estate in real estate as an interest in that property. *See Beeman v. Stilwell*, 194 Iowa 231, 237, 189 N.W. 969, 971 (1922) (stating “[a]n estate for life is a freehold interest in land”). Moreover, it is an interest distinct from and inde-

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pendent of the remainder. *See Holzhauser v. Iowa State Tax Comm'n*, 245 Iowa 525, 535, 62 N.W.2d 229, 235 (1953). Therefore, Ruby had an interest in the farm immediately prior to her death, and that interest—her life estate—was includable in her probate estate under the original version of section 249A.5(2)(c).

[7] As for the 2002 version of section 249A.5(2)(c), it specifically includes “retained life estates” in the deceased recipient’s estate. Moreover, Ruby’s life estate falls within the statutory definition of “retained life estate” because it was created by Ruby, the recipient, and Ruby held an interest in the farm—fee title—at the time she created the life estate. *See* Iowa Code § 249A.2(11) (2003) (defining “retained life estate” in part as “[a] life estate created by the recipient ... in which ... the recipient ... held any interest in the property at the time of the creation of the life estate”). Thus, the district court correctly ruled that section 249A.5(2)(c) required that Ruby’s life estate be included in her probate estate for purposes of satisfying her debt to the department. *Cf. In re Estate of Gullberg*, 652 N.W.2d 709, 713 (Minn.Ct.App.2002) (holding Minnesota’s estate recovery *317 statute required that recipient’s interest in real property owned by his wife must be included in his estate for purposes of Medicaid reimbursement).

The administrator contends this conclusion contravenes federal law. He relies on a provision in the act that amended federal law governing eligibility for Medicaid benefits. *See* Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, § 13611(e), 107 Stat. 312, 627 (1993). Section 13611(e) provided that “[t]he amendments made by this section shall not apply ... with respect to assets disposed of on or before the date of the enactment of this Act.” *Id.* § 13611(e)(2)(B), 107 Stat. at 627 (emphasis added). That date was August 10, 1993. This restriction did not apply to the amendments relating to Medicaid estate recovery, however, because those amendments were in a different section of the act. *See id.* § 13612, 107 Stat. at 627

(amending statutes pertaining to Medicaid estate recovery).

[8] We also reject an argument by the administrator that this issue is controlled by Iowa’s probate code. The administrator argues probate law does not include a decedent’s life estate in the probate estate and does not permit the administrator to pay claims from other than estate assets. *See* Iowa Code §§ 633.3(15) (defining “estate” as “the real and personal property of a decedent”), 633.410-.450 (providing for payment of claims, debts, and charges against decedent’s estate). In contrast, the estate recovery statute provides that “[f]or purposes of collection of a debt created by [section 249A.5(2)] , all assets included in the estate of a medical assistance recipient ... pursuant to [section 249A.5(2)(c)] are subject to probate.” Iowa Code § 249A.5(2)(d) (emphasis added). Thus, the general probate laws do not apply because there is a specific law that addresses the particular matter at issue. *See* Iowa Code § 4.7 (providing when irreconcilable conflict between general and special provisions exists, special provision “prevails as an exception to the general provision”). In addition, as this court noted in *Barkema Trust*, Iowa chose to define “estate” more broadly than required by federal law, including assets that would not otherwise be included within a recipient’s estate under state probate law. *Barkema Trust*, 690 N.W.2d at 55. Therefore, Iowa probate law does not control the determination of assets includable in a recipient’s estate for purposes of satisfying a Medicaid debt. We now consider the administrator’s constitutional defense.

V. Is the Application of Section 249A.5(2)(c) Unconstitutional Under the Circumstances of This Case?

[9] The administrator contends the district court improperly applied the estate recovery statute retroactively to Ruby’s 1990 transfer of a remainder interest to her son. More specifically, he argues allowance of the department’s claim impairs his vested remainder interest in the farm in violation of the state

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and federal constitutions. See U.S. Const. art. I, § 10, cl. 1 ("No State shall ... pass any ... Law impairing the Obligation of Contracts...."); Iowa Const. art. I, § 21 ("No ... law impairing the obligation of contracts, shall ever be passed."). The impairment arises, he contends, from the fact that he will have to sell or mortgage the property in order to have sufficient funds to place the value of Ruby's life estate in the probate estate. See generally *Adair Benevolent Soc'y v. State*, 489 N.W.2d 1, 5 (Iowa 1992) (stating person challenging statute under contract clause must show the state law substantially impairs a contractual relationship).

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The flaw in this argument is that the department did not seek to reach Charles' *318 remainder interest, nor did the district court order that the value of the remainder interest be included in Ruby's estate. That Charles may receive less upon Ruby's death than he anticipated can be attributed to the value of Ruby's life estate, not to the court's inclusion of his remainder interest in the probate estate. We conclude, therefore, that Charles' remainder interest is not impaired by subjecting Ruby's life estate to the department's repayment claim. Consequently, section 249A.5(2)(c) is not unconstitutional as applied in this case.

VI. Summary.

The district court properly ruled the estate was liable for the department's claim for reimbursement of medical assistance payments made to the decedent. In addition, the court did not err in including Ruby's life estate in her probate estate for purposes of satisfying the estate's debt to the department. Finally, the district court correctly held section 249A.5(2) did not have an unconstitutional retroactive effect. Therefore, we affirm the district court's decision.

AFFIRMED.

Iowa, 2005.
 In re Estate of Laughead

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(Cite as: 98 Cal.App.4th 788)

C

DIANA M. BONTA', as Director, etc., Plaintiff and
Appellant,

v.

DEBORAH S. BURKE et al., Defendants and Re-
spondents.

No. C037609.

Court of Appeal, Third District, California.
May 23, 2002.

SUMMARY

The state Director of Health Services brought an action for reimbursement of Medi-Cal expenses against the beneficiaries of real property conveyed to defendants by a recipient of health services who had retained a life estate in the property and the right to revoke defendants' interest. The trial court granted summary judgment for defendants on the ground that the property was not part of the recipient's estate at the time of her death in that it had passed to defendants earlier. (Superior Court of Sacramento County, No. 00AS00011, John R. Lewis, Judge.)

The Court of Appeal reversed. It held that, under real property and probate principles, defendants' interest vested at the time the property was transferred, even though their mother retained the life estate and right to revoke. However, the court held that, for purposes of Medi-Cal reimbursement, "estate" must be construed broadly. As a life tenant, the recipient retained not only the enjoyment of the property but also the unbridled power to divest her daughters of any interest whatsoever. The property had no value to them until the recipient died. Thus, the recipient's interest in the property must be deemed to have passed to the daughters at the time of her death. (Opinion by Raye, J., with Scotland, P. J., and Davis, J., concurring.)

HEADNOTES

(1) Public Aid and Welfare § 35.2--Medi-Cal--Reimbursement for Benefits Paid--From Decedent's Estate--What Is Included in Estate.

In an action by the state Director of Health Services for reimbursement of Medi-Cal expenses against the beneficiaries of real property conveyed to defendants by a recipient of health services who had retained a life estate in the property and the right to revoke defendants' interest, the trial court erred in granting summary judgment for defendants on the ground that the property, having passed to them earlier, was not part of the recipient's estate at the time of her death. Under real property and probate principles, defendants' interest vested at the time the property was transferred, even though the their mother retained the life estate and right to revoke. However, for purposes of Medi-Cal reimbursement, "estate" must be construed broadly. As a life tenant, the recipient retained not only the enjoyment of the property but also the unbridled power to divest her daughters of any interest whatsoever. The property had no value to them until the recipient died. Consistent with the legislative policy of reaching assets not irrevocably transferred to beneficiaries, the recipient's interest in the property must be deemed to have passed to the daughters at the time of her death.

[See 12 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate, § 583; West's Key Number Digest, Social Security and Public Welfare ¶ 241.70.]

COUNSEL

Bill Lockyer, Attorney General, Charlton G. Holland III, Assistant Attorney General, and Frank S. Furtek, Deputy Attorney General, for Plaintiff and Appellant.

Catherine L. Hughes; Law Offices of John L. Boze and John L. Boze for Defendants and Respondents.

RAYE, J.

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The difficult question posed by this case is whether the State of California (State) has a claim for reimbursement of Medi-Cal expenses against the beneficiaries of real property conveyed to them by a recipient of health services who had retained a life estate in the property and the right to revoke their interest. The trial court granted the beneficiaries a summary judgment against the State, concluding that the property was not part of the decedent's estate at the time of her death. We reverse.

Facts

In 1994 Lennie J. Smith executed a grant deed granting a fee simple interest in her house to her daughters, Deborah S. Burke and Linda Osborn, but retained a life estate in the property and the right to revoke the remainder. Four months before Smith died in 1996, the deed was recorded. *790

From September 1994 through December 23, 1996, the Department of Health Services (Department) paid for health care services and health care premiums for Smith. After Smith died, Diana M. Bonta', the Director of Health Services, filed a complaint to enforce and collect money due on a Medi-Cal creditor's claim for \$45,357.58. The trial court denied the Department's motion for summary judgment and granted Burke and Osborn's motion for summary judgment.

Discussion

In 1965 the United States Congress established Medicaid, a cooperative federal/state program to provide health care services to the poor. (Tit. XIX of the Social Security Act, codified at 42 U.S.C. § 1396 et seq.) The federal government partially reimburses a state for medical assistance provided to eligible low-income persons as long as the state abides by the requirement of the Social Security Act to qualify for Medicaid funds. California participates in the Medicaid program through the California Medical Assistance Program (Medi-Cal). (Welf. & Inst. Code, § 14000 et seq.)

Congress enabled states to recover the costs for medical services from the estate of the former recipient. (42 U.S.C. § 1396p(b)(1)(B).) According to federal law, the term "estate," with respect to a deceased individual, "(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and [¶] (B) may include, at the option of the State ... any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement." (42 U.S.C. § 1396p(b)(4).)

Pursuant to the federal enabling statute, California enacted a mandatory estate recovery program. Section 14009.5 of the Welfare and Institutions Code states in relevant part: "[T]he department [of Health Services] shall claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less." (Welf. & Inst. Code, § 14009.5, subd. (a).)

California utilizes the federal definition of "estate." The regulations for the Medi-Cal estate recovery program define "estate" as "all real and personal property and other assets in which the individual had any legal title *791 or interest at the time of death (to the extent of such interest), including assets conveyed to a dependent, survivor, heir or assignee of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement[.]" (Cal. Code Regs., tit. 22, § 50960, subd. (b)(1).)

In *Belshé v. Hope* (1995) 33 Cal.App.4th 161 [38 Cal.Rptr.2d 917] (*Hope*), the Court of Appeal considered whether property passing by way of a revocable inter vivos trust was part of the estate of

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the decedent for purposes of recovery of Medi-Cal benefits. The beneficiaries of Myrtle Hope's trust contended that section 14009.5 of the Welfare and Institutions Code impermissibly enlarged the scope of recovery allowed under federal law by allowing recovery from outside the estate. (*Hope*, *supra*, 33 Cal.App.4th at p. 170.) The court analyzed whether the federal statute, which before 1993 did not define "estate," included nonprobate transfers on death.

There had been a vociferous debate on the scope of an "estate" prior to 1993. The court in *Hope* was part of that debate. In its attempt to decipher congressional intent, the court examined the purpose of the Medicaid Act. "One of the express purposes of the Medicaid Act 'is to enable "each state, as far as practicable under the conditions in such state, to furnish ... medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services" (42 U.S.C. § 1396.)' [Citation.] [¶] Allowing states to recover from the estates of persons who previously received assistance furthers the broad purpose of providing for the medical care of the needy; the greater amount recovered by the state allows the state to have more funds to provide future services. Furthermore, if a person has assets available to pay for the benefits, then the state should be allowed to recover from those assets because that person was not fully entitled to all benefits." (*Hope*, *supra*, 33 Cal.App.4th at p. 173.)

The court found the term "estate" ambiguous because it could mean probate estate or taxable estate. Turning to the Internal Revenue Code, wherein Congress included revocable transfers in the value of the gross estate for federal taxes, the court concluded that Congress intended the term "estate" to be broader than the probate estate. According to the court in *Hope*, if Congress had intended such a narrow definition, it would have said so. (*Hope*, *supra*, 33 Cal.App.4th at pp. 173-174.)

The court rejected the beneficiaries' argument that

the 1993 amendment defining "estate" was compelling evidence that Congress had intended to broaden the definition, and therefore, a pre-1993 "estate" must be limited to *792 the common law definition. Because the amendment did not merely define "estate" but contained major substantive changes and additions, the court concluded "that Congress was merely clarifying the original intent by expressly declaring the meaning of the words used in the act. [¶] We find Congress intended the term 'estate' to have a broad meaning. By including probate and nonprobate transfers on death in the estate, the purposes of the act will be better achieved and the broad definition will ensure that assets of a recipient are used for the cost of care rather than given away." (*Hope*, *supra*, 33 Cal.App.4th at p. 175.)

Two federal cases concluded otherwise. In *Citizens Action League v. Kizer* (9th Cir. 1989) 887 F.2d 1003 (*Kizer*) and *Bucholtz v. Belshe* (9th Cir. 1997) 114 F.3d 923 (*Belshe*), the Ninth Circuit Court of Appeals held that the term "estate" as used in 42 United States Code section 1396p prior to the October 1, 1993, amendment was limited to the common law definition. Consequently, neither property passing to a joint tenant by right of survivorship (*Kizer*) nor property passing to a beneficiary of a revocable inter vivos trust (*Belshe*) was part of a decedent's estate under the Medicaid Act. In *Kizer*, Judge Canby registered a dissent later embraced by the court in *Hope*. (*Kizer*, *supra*, 887 F.2d at pp. 1008-1009.) We need not weigh in on this debate. *Hope*, *Kizer*, and *Belshe* turned on an assessment of congressional intent in the absence of an express definition of estate. Congress has now provided a definition and California has incorporated it into its recovery program. We turn then to the words of the relevant statutes and regulation.

The California Medi-Cal estate recovery program mandates the Department to "claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival" (Welf. & Inst. Code, § 14009.5, subd. (a).)

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Moreover, the definition of "estate" under the federal statute and the state regulation includes, in relevant part, real property "in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement." (42 U.S.C. § 1396p(b)(4); Cal. Code Regs., tit. 22, § 50960, subd. (b)(1).)

(1) In granting Burke and Osborn's motion for summary judgment, the trial court stated: "The law is clear that the fact that the grant of the fee simple interest was revocable does not change the fact that defendants received a vested interest by the transfer. [Citation.] The property interest held by decedent's heirs was granted to them in 1994. The subject property did not pass to them by distribution or survival." The court recognized that *793 *Hope* expanded the definition of estate but concluded it "still requires that the transfer to the recipient occur upon the death of decedent." ^{FN1}

FN1 The trial court considered Smith's right to transfer property without jeopardizing her eligibility for benefits. The Attorney General asks us to take judicial notice of eligibility requirements. We deny the request. Eligibility is not at issue in this appeal.

The simple question is what passed when? The answer for purposes of recovering Medi-Cal expenses is difficult. Burke and Osborn insist that their mother's life estate terminated at the moment of her death, their interest had vested in 1994, and consequently nothing passed to them "by distribution or survival." The Attorney General, on the other hand, argues that as long as the recipient of services reserves an interest in the property and the power to revoke the remainder until she dies, the property is in her estate. Burke and Osborn took fee simple possession, under the language of Welfare and Institutions Code section 14009.5, by survival. According to the Attorney General, "In form, there

was transfer of a defeasible remainder interest when the deed was executed. In substance, Lennie Smith's property interest was only received by [Burke and Osborn] when they survived Lennie Smith."

Burke and Osborn's argument is plausible because a remainderman's interest did vest at the time the property was transferred even though their mother retained both a life estate and the right to revoke their interest. (*Tennant v. John Tennant Memorial Home* (1914) 167 Cal. 570 [140 P. 242].) But we must ascertain the meaning of an "estate" not as the term is used in either real property or probate law but as a term of art for the purposes of the Medicaid and Medi-Cal programs. In that context, we conclude that the State has a claim against the real property for several reasons.

First, the definition of "estate" in federal and state law is very broad. Whatever Congress may have intended before 1993, it included an expansive definition in the 1993 amendment, evidencing an intent to provide states with the authority to obtain reimbursement for medical services from beneficiaries who obtained their interest through a vast array of types of transfers. Those types of transfers include "joint tenancy, tenancy in common, survivorship, life estate, living trust, *or other arrangement*." (42 U.S.C. § 1396p(b)(4), italics added.) The inclusion of the catchall "or other arrangement" suggests that Congress intended the definition to be as all-inclusive as possible.

Second, allowing the State to recover as much as possible of the costs of medical services provided to low-income persons furthers the purpose of the Medicaid and Medi-Cal programs. The recovered costs replenish the program and allow "the state to ... provide future services." (*794 *Hope*, *supra*, 33 Cal.App.4th at p. 173.) Hence, recovery does not turn on "technical differences in the character of how property is owned by a recipient of Medicaid Act benefits in order to permit recovery." (*Id.* at p. 174.)

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Third, Welfare and Institutions Code section 14009.5, subdivision (a) compels the Department to file a claim against "any recipient of the property of that decedent by distribution or survival" The Legislature chose the term "survival" rather than the more familiar term "survivorship." Again, we must presume the choice was both intentional and significant. While a joint tenant takes title by the right of survivorship, a rather narrow class of owners, the Legislature declared that the Department must file against those who received the property by surviving the decedent. Here, Burke and Osborn's interest was realized when the power to revoke terminated, that is, when Smith died and they survived her death.

We conclude that Smith retained a significant "interest in the property" until her death. As a life tenant she retained not only the enjoyment of the property but also, as the holder of the right to revoke the remainder, the unbridled power to divest her daughters of any interest whatsoever. As a consequence, the property had no value to them until Smith died. Consistent with the legislative policy of reaching assets not irrevocably transferred to beneficiaries, Smith's interest in the real property passed to her daughters at the time of her death, who took it by survival. The Department, therefore, is entitled to recover from the recipients of her property the cost of the medical services rendered to Smith. She received the services she needed during her lifetime and the State is entitled to reimbursement after her death.

The judgment is reversed. The parties shall bear their own costs of appeal.

Scotland, P. J., and Davis, J., concurred. *795

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

In the Matter of the Estate	)	Case No. CV-2007-0266
of,)	
	)	APPELLANT'S REPLY BRIEF
)	
MELVIN PETERSON,)	
)	
)	
Deceased.)	
)	
)	

COMES NOW the Appellant, CATHIE PETERSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF MELVIN PETERSON, by and through counsel, JOHN A. FINNEY, of FINNEY FINNEY & FINNEY, P.A., and submits this Appellant's Reply Brief pursuant to the Notice Of Settling Transcript On Appeal, filed October 9, 2009, and following the Respondent's Brief dated December 10, 2009, as follows:

I. ARGUMENT

A. The June 12, 2008 Order Was Interlocutory And Not Final Or Appealable

The Personal Representative takes issue with the State of

Idaho, Department of Health and Welfare's ("Department") characterization of the Order On Petition To Require Payment Of Claim, entered June 12, 2008. The Department asserts that the June 12, 2008 Order did two things, first that it required payment of a claim and second that it "set aside the life estate interest as an asset of the estate for purposes of estate recovery ... [which] effectively ordered the real property to be partitioned for purposes of the payment of the Department's Claim." Respondent's Brief p. 5-6. The Department then argues that Idaho Code 17-201 made the June 12, 2008 Order appealable and final if not appealed within 42 days.

Idaho Code § 17-201, specifically subsections 4, 5, and 7, as urged by the Department, does not make the June 12, 2008 Order appealable. The order did not (4) set apart property, (5) direct partition of real property, nor (7) partition any part of the estate. The Magistrate did not set a specific value being placed upon the Medicaid Life Estate Inclusion. The Magistrate ordered that an "Amended Inventory list - listing the fact that there is a life estate for which purposes of Medicaid recovery, is an asset to be included in the estate and also valuating [sic - valuing] the asset." Transcript 06/03/2008, Page 20. The Magistrate did not set aside nor partition any specific interest or specific value in the property. The Magistrate did nothing more than determine that the Medicaid statute provides for a "Medicaid Life Estate Inclusion" to be included and valued. The Magistrate did not determine any value nor distribute nor set aside, nor partition the "Life Estate Medicaid Inclusion." Such

an order by the Magistrate is not appealable, and is not final. The June 12, 2008 Order was interlocutory. The Personal Representative objected to the relief granted in the interlocutory June 12, 2008 Order. The Magistrate, pursuant to a subsequent motion, allowed a preliminary, limited appraisal.

The appropriate appealable order is the August 11, 2009 Order Granting Petition To Compel. See In re Skinner's Estate, 48 Idaho 288, 282 P. 90 (Idaho 1929) and Matter of Freeburn's Estate, 97 Idaho 845, 848, 555 P.2d 385, 388 (Idaho 1976). The August 11, 2009 Order set values and awarded certain amounts to the Department, and is the appealable order. The review of the objected to interlocutory order (June 12, 2008 Order) is subject to appeal and review with the final appealable order (August 11, 2009 Order). See Matter of Estate of Spencer, 106 Idaho 316, 678 P.2d 108, (Idaho App. 1984).

The cases cited by the Department in support of its position each involved an actual award of a specific interest in real estate or a specific sum regarding an interest in real estate, specifically Wilson v. Fackrell (Idaho 1934) and Estate of Burton (Montana 2009 - unpublished and not citable as precedent). That is not the situation with the June 12, 2008 Order.

The Department's assertions that the June 12, 2008 Order prohibits this appeal, is in error. The June 12, 2008 Order did not grant the Department any interest in the "Medicaid Life Estate Inclusion." The June 12, 2008 Order requires the Personal Representative to amend the inventory to show the "Medicaid Life Estate Inclusion" and to assign it a value. The quote cited by

the Department from the hearing which is set forth on Page 8 of the Respondent's Brief is wholly consistent therewith. The issue of the valuation of this fictitious "Medicaid Life Estate Inclusion" real estate remained to be determined. The Department's claim was allowed against available assets of the Estate, which is not an award of the Department an interest in any real estate or even in the "Medicaid Life Estate Inclusion."

B. The Appraisal Was Only A Preliminary, Tentative, Short Form Appraisal Of The Fee Simple Value

The Department on Page 9 of the Respondent's Brief asserts that the appraisal of the date of death market value of the fee simple value of certain real estate obtained by the Personal Representative is somehow controlling. Initially, the Department cites Idaho Code § 15-1-310 for the proposition that the Department's filing of the Notice Of Filing Appraisal Report And Addendum is admissible, because it was filed with the Court by a Deputy Attorney General for the Department. Idaho Code § 15-1-310 provides that a every document filed "shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein." That provision does not make the appraisal value admissible. Further, the appraisal value is not relevant to the issues on this appeal.

The transcript of the hearing regarding the motion for an appraisal on September 15, 2008 was not requested by the

Department for inclusion in this appeal, and the transcript is not included. The Order Approving Hiring Of Appraiser was entered September 23, 2008 and specifically provided for "a preliminary, tentative, short form appraisal of the fee simple value" of certain real property. Also, by the Order, the Magistrate Court specifically reserved ruling "on the issue of whether a more detailed, long form appraisal is necessary" and "on the issue as to opinion testimony as to life estate valuation or expectancy, until presented with said issue by affidavit and/or testimony pursuant to I.R.E. 702."

Neither the June 12, 2008 Order, nor the receipt of the appraisal, expressly or impliedly trigger the sale of the fee simple real property in order to pay the Department's claim. As stated on Page 9 of the Respondent's Brief, it is not until the Order Granting Petition To Compel entered August 11, 2009 that the Magistrate set a value to the fictitious "Medicaid Life Estate Inclusion" to be included in the assets of the estate and entered an order to sell not only that fictitious interest, but indeed the fee simple interest in the real estate.

C. The Purported Purposes Of Idaho Code § 58-218 Do Not Control Over The Actual Statutory And/Or Rule Provisions

In the argument contained in the Appendix starting on Page 18 of the Respondent's Brief, the Department argues that the language of Idaho Code § 58-218(4), which is reportedly taken "word for word from 42 U.S.C. § 1396p(b)(4)(B)," is an "expanded"

definition. The language of the statute does include the term "life estate" but the Department ignores every other word in that section. The Department ignores the limiting language "to the extent of such interest." The Department ignores the language which it emphasized by underling of "including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement." The instant matter has nothing to do with the value of a life estate conveyed by the Deceased Melvin Peterson at the time of his death of to anyone. No such conveyance occurred (in fact there was at no time a conveyance of a life estate). The Department is claiming that a life estate held until the moment of death, is the subject of the statute. That is an error and an incorrect interpretation of the express and implied language of the statute.

By way of example, if a decedent, prior to death, held an undivided 50% joint tenancy with right of survivorship interest, at death, that interest would be conveyed to the other joint tenant by operation of the deed. That is a non-probate transfer, but the 50% interest of the decedent is included the estate of the decedent for Medicaid recovery.

The Court of Appeals of Oregon Case of State v. Willingham cited by the Department is neither binding, nor on point. Although the language is similar in some respects (likely due to the federal statutes), there is no evidence that Idaho's law was copied from Oregon as proffered by the Department. Further, sub-

section (5) of the Oregon statutory provisions does not have the limiting language as the Idaho statutory provisions. Further, the case cites other statutory historical amendments for their basis, which have nothing to do with the Idaho provisions. The Oregon statutory development and rule provisions are substantially and materially different than the Idaho provisions.

The United States Court of Appeals, Ninth Circuit, following the 1993 Congressional amendments to 42 U.S.C. § 1396p, rejected the argument of the State of California's argument that common law terms were abrogated in Bucholtz v. Belshe, 114 F.3d 923 (1997), a true and correct copy of which is attached hereto (7 pages). The 2002 California case of Bonta v. Burke cited by the Department attempts to distinguish the issue on appeal, but fails to do so, and fails to follow the Ninth Circuit's decision.

The Department asserts in page 18 of the Respondent's Brief, that the common law of Idaho is that when a life estate terminated that the interest passes to the remainderman. That is not the common law of Idaho. As cited in the Appellant's Brief on pages 10 and 11, a remainderman does not take their property by descent or as successors of the deceased's interest. The remainderman's interest was vested at the time of conveyance. The only thing death does, is provide for the moment of enjoying possession. No interest "passes" by the death of the life estate holder.

Contrary to the Oregon, California, and Iowa cases cited by the Department, Idaho's statutory provisions must be based upon the actual language and the intent of the Idaho Legislature. The

Idaho legislature, by the language of the provision, did not change or abrogate Idaho common law. The legislature clearly made the inclusion of a non-probate transfer subject to common law principals by the limiting language of "to the extent of such interest" and by the limiting language of the necessity of a "convey[ance]." Further, the State of Idaho has not adopted any "rules" comparable to the rules of other States for defining or making a "life estate" subject to the Department's claim in an estate. Such a result does not make the statutory provision a nullity, as the statutory provision only applies "to the extent of such interest" and nothing more. The language is contrary to a conclusion that the common law was somehow abrogated or modified, or otherwise impacted.

D. Jurisdiction Over The Personal Representative Is Not
Jurisdiction Over Non-Probate Assets

The Department misconstrues the issue of jurisdiction over Cathie Peterson and her individual assets and liabilities. Of course the Court has jurisdiction over Cathie Peterson as Personal Representative of the Estate. The real property, regardless on the outcome of the proceedings, is vested not in the Estate nor vested in Cathie Peterson as the Personal Representative. If the property was vested in John Smith as the remainderman, it would (just like here) not be subject to the jurisdiction of the Probate Court, just as John Smith would not. The Probate Court would have no jurisdiction to order John Smith to sell his property.

Similarly, if John Smith was serving as Personal Representative, that would not make his remainderman interest (or any other property he owned) subject to the jurisdiction of the Probate Court. Serving as Personal Representative does not, in and of itself, submit a person's individual assets to the jurisdiction of the Probate Court.

Idaho Code § 15-3-602 provides in pertinent part, emphasis added, that "[b]y accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person." As further set forth in the comments, the submission to jurisdiction is only as to proceedings relating to the estate, and nothing further.

The Department cites the relevant Uniform Probate Code provisions regarding the capacity, duty, and authority of the Personal Representative, but fails to recognize the distinction between that capacity, duty, and authority compared to a person's individual status, duty, and authority. The status of a Personal Representative does not consume the individual's status.

E. All Evidence Requires An Oath Or Affirmation, But That Is Not The Standard For Admissibility

The Department appears to assert that every document or statement made in an estate proceeding is "admissible" or is "evidence" because they "shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is

informed." Idaho Code 15-1-310. An attorney is not a witness and is not able to give testimony in a proceeding. Issues of foundation and admissibility are not resolved because of an oath, affirmation, or statement. The Department fails to recognize that no actual evidence or presentation of evidence has been made, and therefore no factual record exists, upon which the Magistrate could make any decision, factual or otherwise. The transcripts of the hearings show that the Personal Representative repeatedly objection to decisions, findings, and conclusion being made by the Magistrate without any witness or other evidence being admitted.

F. Assignment Of Value

The Department asserts that the Personal Representative has somehow failed to comply with the June 12, 2008 Order and that such failure limits an appeal of the August 11, 2009 Order. As set forth on Page 3 of the July 28, 2009 Transcript, the Personal Representative, barring this appeal and the August 11, 2009 Order, is ready and prepared to file an Amended Inventory assigning a value, and in the event of objection, to proceed with evidence as to the value.

On Page 13 of the Respondent's Brief, the Department finally acknowledges that the rules upon which it relies do not apply to this circumstance. The Department even acknowledges the circumstance (a gift of either a life estate or a remainder interest prior to death, even moments prior) to which the rules apply. That is different than a determination of the value of a

life estate at the moment of death. The Department argues that the rules should be used "to determine the value passing at death to the remainderman." This logic fails to understand that nothing passes at death. The remainderman's interest already exists and is not based upon succession or inheritance. The Department is mixing apples and oranges in arguing that the valuation tables should be applied. When a person gifts either a life estate or a remainder interest, there is a value and the rules are a method for determining value based upon the person's life expectancy. The rules are not the only method for determining value in that circumstance. Upon death or at the moment of death, there is no value to a life estate.

Now if a person had gifted (rather than retained) a life estate, and held the remainder interest at death, that remainder interest would have a value. That value would not be based upon the life expectancy of the deceased and the rule cited by the Department would still not apply. The Department's argument fails.

G. Medicaid Life Estate Inclusion Does Not Result In Sale Of Property

Notwithstanding that neither the Department nor the Estate have an interest or ownership in the property, if by some stretch of fiction, the Department (or the Estate) was validly awarded a 38% interest in the fee simple property right, only that 38% interest would be subject to sale by the Estate. The Department argues that by operation of the statute and rules, that the real

property is owned jointly by Cathie Peterson in her individual capacity and by the Estate (through the capacity of the Personal Representative). The Department then argues that all the property is subject to sale. Only the undivided interest would be subject to sale, under the broadest relief possible.

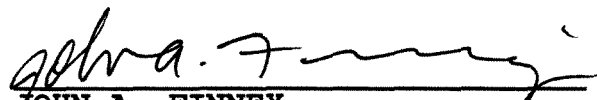
H. The Department Is NOT Entitled To Recover Attorney Fees

For the reasons set forth above, and in the Appellant's Brief, the Department is not entitled to the relief it requested and was granted, and is not entitled to an award of attorney fees and costs.

II. CONCLUSION

The Order On Petition To Require Payment Of Claim, entered June 12, 2008 was interlocutory and was not appealable. The Order Granting Petition To Compel, entered August 11, 2009, was entered upon reversible error, and is not supported by fact or law, and should be reversed. The Estate is entitled to an award of reasonable attorney fees and an award of costs.

DATED this 22nd day of December, 2009.

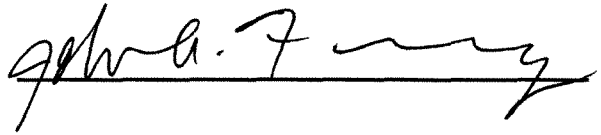

JOHN A. FINNEY
Attorney for Appellant Estate

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated this 22nd day of December, 2009 and was addressed to:

W. Corey Cartwright
Deputy Attorney General
Division of Human Services
P.O. Box 83720
Boise, ID 83720-0036
(Via U.S. Mail)

The Honorable Steve Verby
Bonner County Courthouse
(Via Hand Delivery)

A handwritten signature in black ink, appearing to read "John A. F. [unclear]", is written over a horizontal line.

Westlaw

Page 1

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(Cite as: 114 F.3d 923)

▷

United States Court of Appeals,
Ninth Circuit.
Charlotte BUCHOLTZ; California Advocates For
Nursing Home Reform, a non-profit corporation,
Plaintiffs-Appellees,

v.

Kimberly BELSHE, Director, Gerald Rohlfes,
Chief of the Third Party Liability Branch of the
California Department of Health Services; John
Rodriguez, Chief Deputy Director of Programs of
the California Department of Health Services, De-
fendants-Appellants.

No. 96-16438.

Argued and Submitted April 14, 1997.
Decided June 6, 1997.

Successors of deceased Medi-Cal recipients brought action seeking to enjoin state from attempting to recover costs of Medi-Cal services provided to recipients. The United States District Court for the Northern District of California, Vaughn R. Walker, J., granted injunction. State appealed. The Court of Appeals, Fernandez, Circuit Judge, held that: (1) state could not pursue beneficiaries of inter vivos trusts to recover costs of Medi-Cal services provided to settlors, but (2) state could pursue transferees of deceased recipients' tenancy in common and community property for Medi-Cal reimbursement purposes.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Executors and Administrators 162 ⚡45

162 Executors and Administrators
162III Assets of Estate
162III(A) In General
162k45 k. Trust Estates and Other Equitable Estates and Interests. Most Cited Cases
Under California common law, when person cre-

ates, and transfers property to, inter vivos trust and trust estate does not revert to settlor's estate on his death, trust property is not subject to probate administration in settlor's estate.

[2] Executors and Administrators 162 ⚡45

162 Executors and Administrators
162III Assets of Estate
162III(A) In General
162k45 k. Trust Estates and Other Equitable Estates and Interests. Most Cited Cases
Under California law, property held in inter vivos trust is not part of decedent's estate, even if decedent-settlor retained power to revoke.

[3] Health 198H ⚡494

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk490 Recovery Back or Recoupment of Payments
198Hk494 k. Estate of Aid Recipient, Recovery From. Most Cited Cases
(Formerly 356Ak241.70)
Property held in inter vivos trust is not part of decedent's "estate", for purposes of recovering Medicaid costs. Social Security Act, § 1917(b)(1), as amended, 42 U.S.C.A. § 1396p(b)(1).

[4] Health 198H ⚡494

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk490 Recovery Back or Recoupment of Payments
198Hk494 k. Estate of Aid Recipient, Recovery From. Most Cited Cases
(Formerly 356Ak241.70)
State of California could not pursue beneficiaries of inter vivos trusts to recover costs of Medi-Cal ser-

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vices provided to settlors, as property held in inter vivos trust was not part of a settlor's "estate". Social Security Act, § 1917(b)(1), as amended, 42 U.S.C.A. § 1396p(b)(1); West's Ann.Cal.Welf. & Inst.Code § 14009.5.

[5] Health 198H ➡ 494

198H Health

198HIII Government Assistance

198HIII(B) Medical Assistance in General; Medicaid

198Hk490 Recovery Back or Recoupment of Payments

198Hk494 k. Estate of Aid Recipient, Recovery From. Most Cited Cases

(Formerly 356Ak241.70)

Since property held by a decedent in form of tenancy in common or community property was part of decedent's "estate", even if excused from rigors of probate administration, state of California could pursue transferees of such property for Medi-Cal reimbursement purposes. Social Security Act, § 1917(b)(1), as amended, 42 U.S.C.A. § 1396p(b)(1); West's Ann.Cal.Welf. & Inst.Code § 14009.5.

*923 Beverley R. Meyers, Deputy Attorney General, San Francisco, California, for defendants-appellants.

Amitai Schwartz and Antonio Ponvert, III, Law Offices of Amitai Schwartz, San Francisco, California, for plaintiffs-appellees.

Appeal from the United States District Court for the Northern District of California, Vaughn R. Walker, District Judge, Presiding. D.C. No. CV-95-01342.

924 Before: D.W. NELSON and FERNANDEZ, Circuit Judges, and MOLLOY, District Judge.^{FN}

FN* The Honorable Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

OPINION

FERNANDEZ, Circuit Judge:

S. Kimberly Belshe, Director of the California Department of Health Services, and other officials of that Department (collectively Belshe) appeal from the district court's injunction in favor of Charlotte Bucholtz, Ernest Gentile, and Janet Cottrell, who brought this action on their own behalves and on behalf of all others similarly situated,^{FN1} (collectively Bucholtz). The district court determined that the State of California was not entitled to recover certain Medi-Cal payments from the successors of deceased Medi-Cal recipients, when the successors received the property through revocable inter vivos trusts, or by passage without probate administration of property held in the form of tenancy in common or community property. The district court then enjoined Belshe from taking steps to recover from Bucholtz and further required steps directed toward the refund of money already recovered. We affirm in part, reverse in part, and remand.

FN1. Another plaintiff was California Advocates for Nursing Home Reform, but it did not purport to be a class representative. Our holdings as to Bucholtz apply to it also.

BACKGROUND

Although it might make for somewhat less interesting reading, we will not set forth the facts involved in the individual cases before us. That is because all of the cases follow the same essential pattern, and nothing turns on their individual differences as far as this litigation is concerned.

Basically, Medi-Cal recipients, who have since died, had placed property into revocable inter vivos trusts. When they died, the property went to the beneficiaries of the inter vivos trusts.

Belshe, however, asserted that the state had a Medi-

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Cal claim against the property and the beneficiaries because of California Welfare and Institutions Code § 14009.5, which allows for a claim "against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival." Bucholtz asserted that federal law precluded application of § 14009.5 to the beneficiaries of inter vivos trusts created by Medi-Cal recipients who died before October 1, 1993. See 42 U.S.C. § 1396p(b)(1) (1989).^{FN2} The district court agreed with Bucholtz.

FN2. The law has been amended as to individuals who died after September 30, 1993. See Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, § 13612, 107 Stat. 312, 627-28.

A similar, but far from the same, set of problems was presented by property which passed from Medi-Cal recipients without the necessity of probate administration because it was held in the form of tenancy in common or in the form of community property. The district court also resolved those issues against Belshe. This appeal followed.

JURISDICTION AND STANDARDS OF REVIEW

The district court had jurisdiction pursuant to 28 U.S.C. § 1331. We have jurisdiction pursuant to 28 U.S.C. § 1291.

"A district court's grant of permanent injunctive relief is reviewed for an abuse of discretion or application of erroneous legal principles." *United States v. Yacoubian*, 24 F.3d 1, 3 (9th Cir.1994) (citation omitted). We review questions of law de novo. See *Twenty-Three Nineteen Creekside, Inc. v. Commissioner*, 59 F.3d 130, 131 (9th Cir.1995), cert. denied, 516 U.S. 1154, 116 S.Ct. 1034, 134 L.Ed.2d 111 (1996).

DISCUSSION

Medicaid is a federal program which provides medical assistance to eligible low-income persons and which is administered through the states under a cooperative federal-state funding scheme. A state's participation in Medicaid is voluntary, but participating states must comply with the federal Medicaid Act. California participates through its Medi-Cal program.

*925 Under 42 U.S.C. § 1396p(b)(1),^{FN3} states which participate in the program may not recover medical assistance amounts "correctly paid on behalf of an individual" except, as relevant here, "from his estate." It was pursuant to this enabling statute that California enacted the provision that allows amounts to be recovered from people who received property from a decedent "by distribution or survival." Cal.Welf. & Inst.Code § 14009.5(a).

FN3. All references are to the section as it existed before October 1, 1993, unless otherwise stated.

It is undisputed that Belshe believes that § 14009.5(a) reaches property in which the decedent had an interest at his death, whether that property was held in joint tenancy, in an inter vivos trust, in tenancy in common, or in community property. Neither the parties, nor we, dispute her interpretation of that statutory provision. However, we have made it clear that to the extent that the California provision seeks to reach further than § 1396p(b)(1), it cannot stand.

We thoroughly explained that in *Citizens Action League v. Kizer*, 887 F.2d 1003 (9th Cir.1989). In *Kizer*, California was attempting to recover Medi-Cal payments from "persons who by right of survivorship have succeeded to property they formerly held in joint tenancy with a benefits recipient." *Id.* at 1005. The survivors sued to turn aside the state's claims, and we said:

In construing the statute, we look first to its plain meaning. If the statutory language is unambiguous, its plain meaning controls unless Congress has

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"clearly expressed" a contrary legislative intention. In addition, unless Congress has made manifest an intent to the contrary, a presumption obtains that when Congress uses a common law term, it intends to use it in its common law sense.

Federal Medicaid law limits a participating state's ability to recoup benefits as follows: "No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except ... from his *estate*." Because Congress did not define "estate" in the Act, we look to its common law meaning in construing this statutory section.

At common law, "estate" excluded interests in a decedent's property that were formerly held in joint tenancy. Because the California statute is not so limited, appellants' argument is compelling.

Id. at 1006 (citations and footnote omitted). We, therefore, agreed that "use of the word 'estate' in the recoupment provision limits a state's recovery to property which descends to the recipient's heir or the beneficiaries of the recipient's will upon death." *Id.* at 1005. In so doing, we also noted that even the California statute distinguished between the "estate" of the decedent and property which passed by "distribution or survival." *Id.* at 1006 n. 3. But, again, the federal statute was limited to the estate itself. Thus, the state's claims failed.

Belshe cannot avoid the holding or implications of *Kizer*, but bridles under it and seeks some solace from the fact that Congress has now amended § 1396p(b)(1) to provide that a decedent's estate for purposes of recovery includes assets within his "estate, as defined for purposes of State probate law," and may, at the state's option, include assets which pass through "joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement." 42 U.S.C. § 1396p(b)(4)(A)-(B) (1993). That, however, does not help Belshe's cause. In the first place, it draws the salient distinction between the estate for probate law purposes and other forms of receiving title at death. More

importantly, as we have already said, it does not apply to decedents who died before October 1, 1993, the class with which we are now dealing. That underscores the fact that the amendment was not simply a clarification of prior Congressional intent; it was a directive for the future. Therefore, it is from *Kizer* that we must take our lead as we turn to the questions raised in this case.

A. *Inter Vivos Trusts.*

For these purposes, we see no principled distinction between property held in an inter vivos trust and property held in joint tenancy. It is a commonplace that property held in a revocable inter vivos trust is entirely apart from the trustor's own estate. The trust is an entity all its own; one which has *926 been used for centuries to create different results from those which flow from personal ownership of property. The result of creating an inter vivos trust has been no different in California.

[1][2][3] At common law, "[w]hen a person creates, and transfers property to, an inter vivos trust and the trust estate does not revert to the settlor's estate on his death, the trust property is not subject to probate administration in the settlor's estate." *Parrette v. Hutchison (In re Estate of Parrette)*, 165 Cal.App.3d 157, 164, 211 Cal.Rptr. 313, 318 (1985) (citation omitted); see *Valentine v. Read*, 50 Cal.App.4th 787, 792, 57 Cal.Rptr.2d 836, 840 (1996); *Parson v. Parson*, 49 Cal.App.4th 537, 541-42, 56 Cal.Rptr.2d 686, 688 (1996); *Bierschbach v. Heigho (Estate of Heigho)*, 186 Cal.App.2d 360, 364-65, 9 Cal.Rptr. 196, 201 (1960); see also *Belshe v. Hope*, 33 Cal.App.4th 161, 168-169, 38 Cal.Rptr.2d 917, 922 (1995) (trust transferred a present interest at its creation, was not a testamentary instrument, and property did not pass through estate). The property held in an inter vivos trust is not part of the decedent's estate, even if the decedent-settlor retained the power to revoke. See *Parson*, 49 Cal.App.4th at 541-42, 56 Cal.Rptr.2d at 688; *Parrette*, 165 Cal.App.3d at 164, 211 Cal.Rptr. at 318. Thus, by using accepted

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common law definitions-definitions used in California itself-property held in an inter vivos trust, like property held in joint tenancy, is not part of the decedent's "estate" for purposes of recovering Medicaid costs. See *Kizer*, 887 F.2d at 1006.

[4] In short, a decedent's property interests in revocable inter vivos trusts end at his death, and the property vests in accordance with the trust terms alone, just as a decedent's property interests held in joint tenancy end at his death, and the property vests in accordance with the terms of the joint tenancy provisions alone. Belshe, therefore, cannot pursue inter vivos trust beneficiaries any more than she can pursue joint tenants.

This is all underscored by *Hope*. There, Belshe sought to pursue revocable inter vivos trust beneficiaries and argued, as she does here, that the property should be treated as part of the decedent's estate because the trust was essentially testamentary in character. See *Hope*, 33 Cal.App.4th at 164, 38 Cal.Rptr.2d at 919. The court pointed out that Belshe was misinterpreting California law as it had been outlined by the California Supreme Court in *Tennant v. John Tennant Mem'l Home*, 167 Cal. 570, 140 P. 242 (1914). As the California Court of Appeal wrote:

Tennant holds exactly the opposite of what Department asserts it holds. *Tennant* holds that a trust such as the one here transfers a present interest at its creation. It further holds that the grantor can reserve powers of revocation without invalidating the trust.

The above authorities demonstrate that the trust created by Myrtle Hope is a valid trust and is not a testamentary document.

The Department also argues that because the heirs were not vested with a present interest prior to Myrtle's death, then the heirs took their property through Myrtle's estate. The Department again mischaracterizes language in *Tennant* and ignores its express finding rejecting the same argument made

by the Department here and holding that the deed transferred a present interest in the remainder.

Hope, 33 Cal.App. 4th at 168-69, 38 Cal.Rptr.2d at 922 (citations omitted). The Court of Appeal was under no illusion that property in an inter vivos trust should be treated like property held as part of the decedent's estate. Rather, the court made it clear that inter vivos trust property is treated differently. It is true that *Hope* disagreed with our position in *Kizer* and opined that the word "estate," as used in 1396p(b)(1), should have a broader meaning than the one we gave it. *Id.* at 171, 38 Cal.Rptr.2d at 924. So be it, but we are bound by and will follow *Kizer*. Belshe cannot prevail.

B. Tenancy in Common and Community Property.

Property held in the form of tenancy in common or community property is only superficially similar to property held in joint tenancy or in a revocable inter vivos trust. While the decedent's interest in property held in the latter forms is not subject to his disposition at his death, property held in the former forms is. He may do what he likes with his share; he may devise and bequeath *927 it where he will, or allow it to pass under the laws of intestate succession, if that is his will. In other words, his share is generally subject to his disposition and to administration as part of his estate; it does not simply vest in others. This, surely, is the common understanding of those forms of ownership.

California has said as much regarding tenancy in common. See *England v. Young (In re Estate of England)*, 233 Cal.App.3d 1, 4 n. 2, 284 Cal.Rptr. 361, 362 n. 2 (1991) ("In a tenancy in common, each tenant has a separate but undivided interest in the property which can be conveyed by deed or will."); *Rupp v. Kahn*, 246 Cal.App.2d 188, 196, 55 Cal.Rptr. 108, 113 (1966) ("[T]he decedent's interest as a tenant in common is likewise part of the probate estate."); *Yeoman v. Sawyer*, 99 Cal.App.2d 43, 46, 221 P.2d 225, 227 (1950) (Because the parties held the property as tenants in common,

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upon decedent's death the undivided one half interest standing in decedent's name became a "separate, descendible interest." (citation omitted)).

California has been no less clear about interests in community property. See *Allen v. Graham (In re Marriage of Allen)*, 8 Cal.App.4th 1225, 1228, 10 Cal.Rptr.2d 916, 917 (1992) ("If the property was community property ... her mother's community half passed to her by virtue of the will."); *Komara v. Blair (Estate of Blair)*, 199 Cal.App.3d 161, 166, 244 Cal.Rptr. 627, 630 (1988) ("[I]f property is held as community property, one half belongs to the surviving spouse on the death of the other and the remaining half is subject to the testamentary disposition of the decedent."); *Rupp*, 246 Cal.App.2d at 196, 55 Cal.Rptr. at 113 ("[C]ommunity property is subject to administration in the [decedent's] estate...."); *Thompson v. Boyd*, 217 Cal.App.2d 365, 385, 32 Cal.Rptr. 513, 525 (1963) ("[C]ommunity property passing from the control of the [decedent] by reason of his death is subject to his debts and administration in his estate.").

All of this militates in favor of Belshe's position, and Bucholtz takes too simplistic a view of our decision in *Kizer* when she argues that simply because property can sometimes be received by a surviving spouse without actual "probate administration" it cannot be part of the estate. It is true that in *Kizer* we mentioned the plaintiff's argument that because the joint tenancy bypassed probate, it was not part of the estate. See 887 F.2d at 1005. But we put no particular weight on that argument; rather, we held that the property was not part of the decedent's estate.

[5] At one time, if property were part of the "estate," probate administration would almost certainly be called for. But legislatures in more modern times have sought to avoid the necessity and expenses of probate administration when there does not appear to be any particular reason to administer the estate. Thus, it has long been the law of California that if an estate is small enough, it can be transferred without actual probate administration. See

Cal.Prob.Code §§ 13100-13116. The property is no less a part of the decedent's estate, but the expense of transferring it to the heirs or devisees is reduced. The property still passes in accordance with the directions in the decedent's will or by intestate succession. See Cal.Prob.Code §§ 13110, 13006. Moreover, the property remains liable for the decedent's debts. See Cal.Prob.Code § 13109. Clearly, it is part of the decedent's estate, even though it is not actually subjected to administration.

By the same token, the law of California now provides that assets held in the form of community (or separate) property can be transferred to the surviving spouse without probate administration, if the decedent wills it to her or if she would receive it through intestate succession. See Cal.Prob.Code §§ 13500-13506. The property remains subject to the decedent's debts. See Cal.Prob.Code § 13550. Again, it is perspicuous that the property has remained part of the decedent's estate, even though it has avoided actual administration.

Therefore, the mere fact that property which is part of the decedent's estate in every salient sense may not be put through the rigors of classical probate administration will not suffice to preclude California from proceeding against the recipients of the property for Medi-Cal reimbursement purposes.

CONCLUSION

Once again we have been asked to traverse the territory which we covered in *Kizer*. We *928 have done so and hold that California may not pursue the beneficiaries of inter vivos trusts to recover the costs of Medi-Cal services provided to people who died before October 1, 1993. It may, however, pursue people who received property held by the decedent in the form of tenancy in common or community property. A proper reading of *Kizer* sub-tends both of these results.

We are not unmindful of the suggestion that the rights of recipients of property in which the de-

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cedent had an interest will vary depending on how that interest was held. However, people who engage in proper estate planning often achieve results different from, and better than, those obtained by people who are unwilling or unable to do so. Those results often flow from the form of holding title to property. We see nothing sinister about the fact that before October 1, 1993, people utilized the options that our sophisticated system of property law made available to them at the time.

AFFIRMED in part, REVERSED in part, and REMANDED. The parties shall bear their own costs on appeal.

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